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LETTERS

TO THE HONOURABLE

Mr. Juſtice BLACKSTONE,

CONCERNING

His EXPOSITION of the ACT of TOLERATION,

AND

Some POSITIONS relative to RELIGIOUS LIBERTY,

In his Celebrated

COMMENTARIES on the Laws of England.

By PHILIP FURNEAUX, D.D.

The SECOND EDITION with ADDITIONS,

AND

An APPENDIX, containing AUTHENTIC COPIES of the Argument of the late Honourable Mr. Juſtice FOSTER in the Court of Judges Delegates, and of the SPEECH of the Right Honourable Lord MANSFIELD in the Houſe of Lords, in the Cauſe between the CITY of LONDON and the DISSENTERS.

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THE PREFACE TO THE SECOND EDITION.

IN publiſhing the following letters to the Honourable Mr. Juſtice Blackſtone, containing obſervations on ſome parts of his Commentaries on the Laws of England, my deſign was, not only to induce the learned Commentator to reconſider ſeveral paſſages of his celebrated work, which, as I thought, were injurious to the intereſts of religious liberty; but to promote amongſt my readers in general juſt conceptions of the right of private judgment, and of impartial liberty in matters of conſcience; which of all human rights ſeems to me to be one of the moſt ſacred and unalienable. How far I have ſucceeded in either of theſe views, it becomes not me to ſuggeſt. The worthy Commentator, indeed, in a new edition of his work, hath made very conſiderable alterations in the moſt obnoxious paſſages on which I had remarked: however, I will not aſſert, that the conviction which produced theſe amendments, was owing to my performance, inaſmuch as the Honourable Gentleman hath not given me authority to aſſert it. But whether theſe corrections are to be aſcribed ſolely to his own reflections, or in part at leaſt, to the ſuggeſti-

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ons and reaſonings of any other perſon; in either caſe they are a noble ſacrifice to truth, which whoever doth not greatly admire and applaud, muſt, I think, be deſtitute of every ſpark of ingenuity and candor. I am bound in honour and juſtice to the learned Gentleman, to point out diſtinctly in this edition of my letters, the particular corrections he hath made, of thoſe paſſages which I had conſidered. Thus the reader will know, how far we are now agreed, and in what points we ſtill differ; and will conſider me in the former caſe, as not now writing againſt Mr. Juſtice Blackſtone; but againſt any other perſon who may happen to hold, or advance, the ſentiments which he before ſeemed to eſpouſe.

There are ſtill ſome material queſtions between us; in particular, with reſpect to the Act of Toleration, as to which I cannot perceive the learned Judge hath at all altered his ſentiments. I obſerved in my firſt letter, that I never ſhould have argued this point with a perſon of his uncommon acquaintance with the laws of England, if I had not known the opinion I had formed, had been agreeable to the declared ſentiments of thoſe who either have been, or now are, the ornaments of the higheſt ſtations in the law; and to the moſt ſolemn judicial deciſions. I think myſelf, therefore, ſingularly happy in the opportunity of publiſhing authentic copies of the argument of the late Mr. Juſtice Foſter delivered in the Court of Commiſſioners Delegates, and of the celebrated Speech of Lord Mansfield in the Houſe of Lords, in the Sheriff's caſe: a ſpeech, which in point of arrangement, weight of argument,

ment, perſpicuity and energy both of expreſſion and ſentiment, hath ſeldom, I believe, been equalled on any occaſion, unleſs by the Noble Lord himſelf. And I here make my moſt humble and grateful acknowledgments to that truly Great Man, for the peculiar honour he hath done me, in permitting me to convey to the world a copy of that admirable model of juridical and ſenatorial eloquence.

I mentioned in the former edition of my letters having in my poſſeſſion a copy, which by many very competent judges, who were preſent when the ſpeech was delivered, and ſome of them members of the Supreme Court by which the Cauſe was determined, was thought to be not inaccurate: an imperfect tranſcript of which having, entirely without my knowledge, appeared in an evening paper, I was deſirous, if I could obtain his Lordſhip's permiſſion, to favour the world with a more faithful copy. I accordingly waited on his Lordſhip, and had my requeſt in the moſt condeſcending manner granted. Indeed his Lordſhip, when he delivered that incomparable Speech, had no notes, and had afterwards taken no memorandums; but having read the copy, he declared his approbation of it: and it is accordingly printed in the Appendix, by Permiſſion.

My learned and worthy friend Mr. Dodſon will likewiſe accept my particular thanks for communicating to me in the moſt obliging manner, the original of his late uncle the Honourable Mr. Juſtice Foſter's very accurate and maſterly Argument.

These excellent performances, thus authenticated, may be quoted as authorities: and they are such authorities as will be respected by the Bench and the Bar, as long as sound Reason, accurate Law, and impartial Justice shall have their proper weight with either.

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THE PREFACE TO THE FIRST EDITION.

PErſecution is unwarrantable in any cauſe; yet it may moſt naturally be expected in favour of a bad one. I do not much wonder, therefore, that the church of Rome hath recourſe to it in ſupport of her manifold corruptions and uſurpations. But that Proteſtants ſhould have imitated her in this greateſt of all her enormities, and have thereby imprudently given a ſanction to her cruel treatment of themſelves, is aſtoniſhing. Nevertheleſs, that it is true, the hiſtory of our own country abundantly teſtifies.

At the beginning of the Reformation, in the reign of Elizabeth, ſeveral who had been perſecuted in the preceding reign, the Queen herſelf not excepted, diſcovered very intolerant principles, and made no ſcruple to perſecute thoſe who differed from them. Very oppreſſive and ſanguinary laws were enacted againſt the puritans, and all nonconformiſts to the eccleſiaſtical eſtabliſhment. In the ſubſequent reigns of the male line of Stuart, ſuch laws were greatly multiplied, and the moſt ſevere and violent meaſures purſued, to accompliſh that Utopian ſcheme, an eccleſiaſtical uniformity. Im-

mediately upon the Revolution, the great Mr. Locke pleaded, with a clearneſs and ſtrength peculiar to himſelf, the cauſe of univerſal and impartial liberty of conſcience in his celebrated Letters on Toleration *. Senſible and enlarged minds quickly felt the force of his argument. But it required time for the moſt perſpicuous and cogent reaſonings, to eradicate general prejudices, and to alter the ſentiments and complexion of the publick.

* The Toleration-act received the Royal Aſſent May 24, 1689. and the ſixth of June following Mr. Locke, writing to Mr. Limborch, thanks him for ſending over the copies of the Latin letter concerning Toleration, which was printed in Holland; where indeed it had been written during his retirement in the year 1685, as we are informed by the author of his life prefixed to the folio edition of his works; and it was probably now publiſhed with a view to promote the Act of Toleration. The copies which were not bound, he ſaith, were not yet come to hand; and thoſe which were bound, and which were come to hand, were probably intended for preſents, and might arrive time enough to be diſperſed amongſt the principal members of both Houſes during their debates upon the Toleration-act; eſpecially as it appears, they had been arrived ſome conſiderable time, by his ſaying, that he underſtood there was a perſon now employed (aliquem Anglum jamjam occupatum intelligo) in tranſlating the letter into Engliſh. I have been the more particular in this account, becauſe it hath been ſaid, that Mr. Locke's letter upon Toleration could not poſſibly have any influence on the Toleration-act; which the form of expreſſion in the next ſentence but one in the former edition implied it might. It is now ſo altered as to be conſiſtent with either ſuppoſition.

Mr. Locke's ſentiments concerning the imperfection of the Act of Toleration he thus elegantly expreſſes in the ſame letter to Mr. Limborch: It is framed, ſaith he, non ea forſan latitudine, quâ tu et tui ſimiles, veri et ſine ambitione vel invidiâ Chriſtiani, optarent. Sed aliquid eſt prodire tenùs. His initiis jacta ſpero ſunt libertatis et pacis fundamenta, quibus ſtabilienda olim erit Chriſti eccleſia: not with that latitude perhaps, which you, and ſuch as you, who are genuine Chriſtians, void of all ambitious and party views, would wiſh. It is ſomething, however, to advance thus far; for by ſuch beginning thoſe foundations of liberty and peace are, I hope laid, on which the Church of Chriſt will come in ſome future time to be eſtabliſhed.

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For not only in the beginning of the reign of our glorious deliverer King William, when the Toleration was enacted, were the views of the legiſlature ſo confined, that it was clogged with exceptions againſt heretics; but upon them, as well as infidels, very ſevere penalties were afterwards inflicted in the ſame reign, by a particular ſtatute. This, I am perſuaded, was not at all owing to the King, who ſeems to have had more generous ſentiments of men's religious rights; but to the blind zeal of the times, and to the high principles of ſome leading men in convocation and parliament.

However, the ſentiments and temper of the nation have been ſince greatly meliorated, eſpecially under the mild adminiſtration of the Princes of the Houſe of Hanover; to which happy reform no one contributed more than that admirable ſecond to Mr. Locke, the late Biſhop of Wincheſter *, by his excellent writings in defence of religious as well as civil liberty. Inſomuch that perſecution having been diſcouraged by the civil power, and now become a ſtranger amongſt us, the generality of people, no doubt, imagine, that this hideous monſter hath no more countenance in the laws of their country than in the ſpirit of the times. The truth is, the legal ſtate of religious liberty in theſe kingdoms is very little underſtood. Men naturally preſume, that, in this free and enlightened age, the rights of conſcience, eſpecially as they ſee them poſſeſſed without reſtraint or moleſtation, have the ſame legal ſecurity with their civil rights. It will perhaps ſur-

* Dr. Hoadley.

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prize many of my readers, if they are unacquainted with the Laws of their country, or have not read the late excellent Commentaries upon them, to hear that Deiſts and Arians, if they declare their ſentiments, are by law incapable of holding any offices or places of truſt, bringing any action, being guardians, executors, legatees, or purchaſers of lands, and are to ſuffer three years impriſonment without bail:—that to revile, or even openly to ſpeak in derogation of the common prayer, renders a man liable to a fine of an hundred marks for the firſt offence, to one of four hundred for the ſecond, and for the third, to a forfeiture of all his goods and chattels, and impriſonment for life:—and that the Toleration-act itſelf is ſo limited, that many who are commonly thought to enjoy under it, deſervedly, every ſecurity which the law can give them, are yet ſubject to very ſevere and heavy inflictions, to their utter ruin, as the law now ſtands:—And as for thoſe comprehended within that act; if according to the opinion of ſome lawyers, they are only exempted by it from the penalties of certain laws, and are not reſtored to a legal conſideration and capacity; upon this idea, I ſay, they lie open to ſuch inabilities and oppreſſions, that, were advantage taken of them, their very enemies would hardly wiſh their ſituation to be more deplorable. However this confined expoſition of the Toleration-act, though ſtill maintained, it ſeems, by ſome of the profeſſion, hath been happily condemned by moſt of the Judges, and is inconſiſtent with thoſe grounds, on which was founded, in a particular caſe, a ſolemn judgment of the ſupreme court of judica-

judicatures. And under this discouragement it will never again, I trust, obtain the countenance of any court of law.

However that be, there are several persecuting statutes, those which I have mentioned and some others, which, I think, were a reproach to the times when they were enacted, and are much more so to the boasted freedom and liberality of sentiment of the present age, which suffers them to continue unrepealed.

Let me only ask any friend of civil liberty, what, would be his reflections, if he had no security for the possession of his rights and privileges in the laws and constitution of his country, but held them only through the moderation of his superiors, or the spirit of the times? I believe, he would be extremely uneasy, till they were fixed on a legal basis; extremely attentive to the sentiments and conduct of those who, from their abilities, or their rank and station, might probably obstruct or promote so desirable a settlement: and those who, in any critical juncture, would be likely to act in opposition to the cause of liberty, would certainly be the objects of his jealousy, if not of his aversion. Now let every such friend of the civil rights of his country, whatever be his own religious opinions, and however secure he may himself be in his religious profession under the protection of the law, consider the case of those who are obnoxious to such penal statutes, as, being still in force, may possibly be employed (and he can never be sure they will not be employed

ployed) as inſtruments of perſecution and oppreſſion. Every generous mind will make the intereſt of others, in ſuch caſes, his own; and will be far from palliating or excuſing, much more from defending, ſuch laws as are incompatible with equity and humanity, and which, by thoſe who would be thought friends of religious liberty, ſhould never be mentioned but with diſapprobation and cenſure. What part the ingenious and learned Commentator on the Laws of England, to whom the following Letters are addreſſed, hath taken, when he is conſidering ſome of thoſe ſtatutes to which I refer, is not for me to ſay: the publick, as it is fit it ſhould, will judge.

No laws which are unjuſt, and inconſiſtent with that religious liberty which it is right the inhabitants of theſe kingdoms ſhould enjoy, (and I apprehend that which they do enjoy, it is generally thought right they ſhould, becauſe they have now enjoyed it for many years unmoleſted); I ſay, no laws which are indefenſible, and incompatible with the rights of conſcience, ſhould be ſuffered to remain unrepealed. For if it be proper, that ſuch rights ſhould be poſſeſſed in the extent in which they are through the lenity of the times, it is proper there ſhould be a legal ſecurity for the poſſeſſion of them; that they may not be trampled upon through the poſſible caprices of men in power, or ſome unaccountable turn in the ſentiments of the publick. And though I would not be underſtood to inſinuate, that there is at preſent any likelihood of ſuch an infringement; yet

yet the rights of human nature (and religious liberty in its full extent is one of theſe) ſhould never lie at the mercy of any; but on the contrary, ſhould have every protection and ground of ſecurity, which law, and the policy of free ſtates, can give them.

If any one ſay, It is right to keep a rod *in terrorem*, though it would be injuſtice or inhumanity to uſe it: I ſhall be apt to ſuſpect, that, notwithſtanding his fair pretences, when a proper opportunity offers, he will not fail to uſe it. For I am ſure, if, in the concerns of religion, human *terror* be a proper motive, human *puniſhment* is equally ſo.

ADVERTISEMENT to the FIRST EDITION.

THE following Letters were nearly printed off, before the Gentleman, to whom they are addreſſed, was appointed to the high ſtation which he now fills in the law. This is mentioned as an apology for a form of addreſs which the reader will perceive is not ſuitable to his preſent character.

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LETTERS

TO

WILLIAM BLACKSTONE, Esq;

LETTER I.

SIR,

YOUR candour, I doubt not, will readily excuse an admirer of your excellent Commentaries on the Laws of England; if, from a desire of their being rendered still more excellent than they are, he gives you an opportunity of reviewing some passages, which, to him at least, appear to be exceptionable, and not so judicious and accurate, as other parts of your truly admirable performance. It were to be wished, that a work, so nearly perfect, were *omnibus numeris absolutum*.

My profession, Sir, is not that of the law; and if it were, it would be with diffidence, at least with much deference, I should make remarks on the composition of so great a master. The point, however, which I have in view, not only is of great importance to myself, amongst others, who dissent from the established church, but some cases of a public nature, which have come under my observation, have given me frequent occasion to consider it with no small attention. Nevertheless, if I had not found my own sentiments authorized and supported by their congruity to the declared opinion of persons of the most accurate and comprehensive acquaintance with the laws of

England, and by thoſe general grounds and reaſons, on which the moſt ſolemn judgments have been given; I ſhould hardly have preſumed to offer to you, and to the publick, the following obſervations.

I remember, when ſome years ago, I read your Analyſis of the laws of England, and obſerved, that, in the third chapter of the fourth book, under the head of offences againſt the eſtabliſhed church, you mentioned "Nonconformity to its worſhip — through Proteſtant diſſenting;" and added "Penalty: ſuſpended by the toleration-act:" I then imagined that your ſentiments of the intent and influence of that act, and of the ſtate and condition of the Diſſenters under it, were confined and narrow. However, I flattered myſelf, that, when you came to conſider the matter more thoroughly in your larger work, you would ſee reaſon to repreſent the caſe of the diſſenters ſomewhat differently; and do it, as I think, more juſtice.

But in the fourth volume of your Commentaries, chapter the fourth, p. 53. I am ſorry to find the following paſſage: "The penalties (*viz.* thoſe which are laid upon "the Diſſenters by abundance of ſtatutes, in particular "by * 35 Eliz. c. 1. 17 Car. II. c. 2. 22 Car. II. c. 1.) "are all of them ſuſpended by the ſtatute 1 Will. & Mar. "ſtat. 2. c. 18 †, commonly called the Toleration-act, "which exempts all Diſſenters (except Papiſts, and ſuch "as deny the Trinity) from all penal laws relating to "religion, provided they take the oaths of allegiance and

* In the new edition is inſerted, "23 Eliz. c. 1." There are ſeveral other ſtatutes, which ſhould have been mentioned; and above all, (for a reaſon which will be hereafter aſſigned) 1 Eliz. c. 2. § 2. & 14.

† In the new edition is here added the title of the Act; namely, "for exempting their majeſties proteſtant ſubjects, diſſenting from the church of England, from the penalties of certain laws."

"ſupremacy,

" ſupremacy *, and ſubſcribe the declaration againſt Po-
" pery, and repair to ſome congregation, regiſtered in the
" biſhop's court or at the ſeſſions, the doors whereof muſt
" be always open: and diſſenting teachers are alſo to ſub-
" ſcribe the thirty-nine articles, except thoſe relating to
" church-government and infant-baptiſm. Thus are all
" perſons, who will approve themſelves no Papiſts or op-
" pugners of the Trinity, left at full liberty to act as their
" conſciences ſhall direct them in the matter of religious
" worſhip †."

This is all you ſay of the toleration-act in your Commentaries; and before I make any obſervations upon it, I beg leave to mention a paſſage in your anſwer to Dr. Prieſtly; who had obſerved ‡, that he " did not know " that MERE *nonconformity* was any crime at all in the " laws of England—ſince the act of toleration:"—You ſay §, that you " beg leave to inform Dr. Prieſtly, ſince " it ſeems he is yet to learn it, that nonconformity is ſtill " a crime by the laws of England, and hath ſevere penal-
" ties annexed to it, notwithſtanding the act of tolera-
" tion, (nay expreſsly reſerved by that act) in all ſuch as
" do not comply with the conditions thereby enjoined.
" In caſe the legiſlature had intended to aboliſh both the
" crime and the penalty, it would at once have repealed all
" the penal laws enacted againſt nonconformiſts. But it
" keeps them expreſsly in force againſt all Papiſts, oppug-
" ners of the Trinity, and perſons of no religion at all:
" and only *exempts from their rigour* ſuch ſerious, ſober-
" minded Diſſenters, as ſhall have taken the oaths, and

* Added, in the laſt edition, (" or make a ſimilar affirmation being quakers.")

† Added, " And if any perſon ſhall wilfully, maliciouſly, or " contemptuouſly, diſturb any congregation, aſſembled in any " church, or permitted meeting-houſe, or ſhall miniſter any " preacher or teacher there, he ſhall (by virtue of the ſame " ſtatute) be bound over to the ſeſſions of the peace, and " forfeit twenty pounds."

‡ Remarks, p. 49 § Reply, p. 11, 12.

"subscribed the declaration at the sessions, and shall re-
"gularly repair to some licensed*" (registered) place "of
"religious worship. But though these statutes oblige me to
"consider nonconformity as a breach of the law, yet (not-
"withstanding Dr. Priestley's strictures) I shall still con-
"tinue to think, that *reviling the ordinances of the church*
"is a crime of a much grosser nature than the other of
"mere *nonconformity*."

So that, in, in your opinion, Sir, mere nonconformity is a crime, though not so great as some others; and is so considered in the eye of the law, notwithstanding the toleration-act. The *penalties*, indeed, by that act are SUSPENDED, but the CRIME subsists still.

In support of this opinion you remark, that "noncon-
"formity is still a crime, and hath heavy penalties an-
"nexed to it, notwithstanding the act of toleration, (nay,
"expressly reserved by that act) in all such, as do not
"comply with the *conditions* thereby enjoined." But these *conditions*, in my opinion improperly so filled, are only a *prescribed method* in which Dissenters are to approve

* *Registered* is the word in the Act. A *licence*, in its common acceptation, implies a power of refusal: but in the present case there is no such power: for the clerk of the peace, or the register of the archdeacon's and bishop's court, is by the act *required* to register such place of meeting, upon its being certified. Accordingly, where this hath been refused by uninformed justices and clerks of the peace, a *mandamus*, upon application, hath been always granted, as it must be, to compel their compliance. Yet in the bishop's court of the diocese of Winchester, (I know not whether in any other) notwithstanding that the toleration-act requires only that the place of worship be *certified*, an *humble petition* is, at least lately was, insisted upon, to the Right Reverend Father in God, *&c.* alledging a variety of particulars in support of the petition, and *humbly praying*, that he would be PLEASED to licence such a place of worship. To such an unwarrantable extent hath the idea of licencing been carried But, I hope, this practice is, or will be, discontinued. If it is not, and should be legally questioned in the courts at Westminster, as perhaps it may, it will be quickly found, that it cannot be supported.

themselves

themſelves MERE NONCONFORMISTS, or in your own words, "no Papiſts, oppugners of the Trinity, or perſons of no religion at all." Your remark then amounts to this, that popery, hereſy and infidelity, or irreligion, are ſtill crimes in the eye of the law, notwithſtanding the toleration-act. But can it be inferred from hence, that there is any crime in MERE *nonconformity?* You ſeem to think it may, and to make it plain, you obſerve, that "in caſe "the legiſlature had intended to aboliſh both the crime "and the penalty, it would at once have repealed all the "penal laws enacted againſt nonconformiſts; but it hath "expreſsly kept them in force," you ſay, "againſt all Pa-"piſts, oppugners of the Trinity, and perſons of no re-"ligion at all." Your argument I take to be this, that becauſe the legiſlature "hath kept them in force againſt all "Papiſts, oppugners of the Trinity, and perſons of no re-"ligion at all;" *therefore* (a ſtrange non-ſequitur ſurely!) it did not intend to repeal them, and aboliſh the crime as well as the penalty, as to thoſe who are NO Papiſts, or oppugners of the Trinity, or perſons of no religion at all, but mere nonconformiſts to the eſtabliſhed rites and modes of worſhip. Theſe ſerious ſober-minded Diſſenters are *only exempted from the* RIGOUR *of the penal laws.* They are ſtill *criminals* it ſeems, only the *penalties* due to their crime are *ſuſpended*; and their nonconformity is ſtill a breach of the law.

Upon this principle, the uſe of the term, ſuſpenſion of penalty, both in your Analyſis and Commentaries with reſpect to the effect of the toleration-act, may be eaſily accounted for, and appears conſiſtent.

It is true, in your Commentaries, after declaring the penalties to be *ſuſpended* by the toleration act, you immediately add, "which" (toleration-act) "*exempts* all Diſ-"ſenters (except papiſts, and ſuch as deny the Trinity) "from all penal laws relating to religion, provided they "take the oaths," &c. But this ſeems to mean nothing more than the ſuſpenſion which you had juſt ſpoken of,

to be only exegetical of that term; to be an "exemption (as you expreſs it in your reply to Dr. Prieſtley*) "from the rigour" or penalties "of thoſe laws," but not from the crime on which the penalties were grounded. This I apprehend, to be your real meaning: I ſhould be glad to find myſelf miſtaken. I think the truth is, that nonconformiſts (namely, to the peculiar rites, diſcipline, and government of the church, as this word always ſignifies) are freed from all the effects of the penal laws, as to crime as well as penalty; but theſe ſtatutes remain in force, both as to crime and penalty, with reſpect to thoſe who are *more* than mere nonconformiſts; who are Arians, or Papiſts, or perſons of no religion at all: and that, not on account of their nonconformity, but of their ſuppoſed hereſy, or enmity to the government, or infidelity, and irreligion: It is not, I ſay, their "nonconformity which is ſtill a crime, "and hath heavy penalties annexed to it" as you aſſert; but their ſuppoſed hereſy, or popery, or irreligion: which is very plain; for, if they purge themſelves of theſe, and ſhew, in the way deſcribed by the toleration-act, that they are no Arians, Popiſh recuſants, or infidels, and perſons of no religion, they are immediately, notwithſtanding their nonconformity, unaffected by theſe ſtatutes.

The queſtion then is, whether Nonconformity be a crime in thoſe, who, complying with the toleration-act, have "approved themſelves no Papiſts, oppugners of the Tri-"nity, or perſons of no religion at all?" Or, what is the ſtate of MERE NONCONFORMISTS *under that act?* Are they in the eye of the law criminal, tho' the penalties are ſuſpended? or are they reſtored to a legal capacity, and to a freedom from all crime as well as penalty, in virtue of the toleration act?

In my opinion, to repreſent nonconformity as a crime, the penalties of which are merely ſuſpended, is a defective

* Page 11, 12.

and

and erroneous account of the ſtate of the Diſſenters, under the toleration-act. And to ſhew this,

The FIRST obſervation I would make is: That *ſuſpenſion* of penalty is not the language of that act. The title of the act indeed uſes the phraſe, exemption from penalty: it is ſtiled, An act for exempting their majeſties Proteſtant ſubjects, diſſenting from the church of England, from the penalties of certain laws *. But the act itſelf uſes a comprehenſive and forcible expreſſion, which excludes the *crime* as well as the *penalty*; it leaves theſe penal ſtatutes *no operation at all*, with reſpect to the Diſſenters who are under the toleration-act; it *repeals* and *annibilates* thoſe ſtatutes with regard to ſuch Diſſenters. The words of the toleration-act are, that thoſe ſtatutes ſhall not be conſtrued to EXTEND to ſuch perſons. And if they are not to be conſtrued to *extend* to them, nothing can be plainer, than that they are not to be conſtrued to *affect them at all*, either as to crime or penalty. Now, if the ſtatute-law doth not make this a crime, it is certain, it is no crime at all by the *common-law*; becauſe the conſtitution of the church, and its peculiar doctrine, worſhip, diſcipline, and government, are founded wholly upon the ſtatute-law, and not at all upon the common law †.

Inſtead,

* It was obſerved by a learned Judge, who differed in opinion from his brethren in the ſheriff's caſe, that the titles of acts of parliament furnith a very good clue for explaining them; and from hence he inferred, that the act of toleration is *merely* an exemption from the penalties of certain laws. But I beg leave to obſerve, that to illuſtrate or *explain* acts of parliament by their titles is one thing, to reſtrain or *limit* them is another. Whether they amount to *more* than their titles expreſs, muſt be determined by the words or clauſes of the act itſelf. The teſt-act ſupplies us with a caſe in point, it being intitled, An act for preventing dangers which may happen from Popiſh recuſants; and yet every one knows it is ſo drawn as to comprehend alſo the Proteſtant Diſſenters. Indeed numberleſs inſtances might be produced, in which, were we to reſtrain the intention of acts by their titles, we ſhould fall into moſt egregious miſtakes.

† "If it is a crime not to take the ſacrament at church," ſaid a Noble Lord in a high department of the law, (and by parity of

Inſtead, therefore, of ſaying in the Commentaries, that the *penalties* are all of them *ſuſpended by the toleration-act*, which

reaſon, if it had been to the particular purpoſe of his argument at that time, he might have ſaid, If it be a crime not to go to church, or join in any of its public offices) "it muſt be a crime "by ſome law; which muſt be either common or ſtatute-law, "the canon law inforcing it depending wholly upon the ſtatute-"law. Now the ſtatute law is repealed, as to perſons capable "of pleading, that they are ſo and ſo qualified; and, therefore, "the canon law is repealed with regard to thoſe perſons. If it is a "crime by common law, it muſt be ſo either by uſage or princi-"ple. There is no uſage or cuſtom, independent of poſitive "law, which makes nonconformity a crime. The eternal prin-"ciples of natural religion are part of the common law: the "eſſential principles of revealed religion are part of the com-"mon law; ſo that any perſon reviling, ſubverting, or ridicul-"ing them may be proſecuted at common law. But it cannot "be ſhewn from the principles of natural or revealed religion "that, independent of poſitive law, temporal puniſhments "ought to be inflicted for mere opinions with reſpect to parti-"cular modes of worſhip. Perſecution for a ſincere, though "erroneous conſcience, is not to be deduced from reaſon or the "fitneſs of things: it can only ſtand upon poſitive law. See his Lordſhip's ſpeech in the Appendix, No II.

The act of uniformity 1 Eliz c. 2. is that poſitive law upon which reſted the obligation to conformity previous to the tolera-tion-act, the acts of uniformity of Edward the Sixth having been repealed by 1 Ma. Seſſ. 2. c. 2. But it is expreſly declared by the toleration-act, that the 14th clauſe of the act of Elizabeth, which enjoined conformity to the church, ſhall not be conſtrued to *extend* to Proteſtant Diſſenters, that is, it is repealed with re-gard to ſuch perſons; and the acts of the 2d of Edward the Sixth, c. 1. and of the 5th and 6th of Edward the Sixth, c. 1. which were revived by the ſecond clauſe of the act of uniformity of Elizabeth, are, as far as they require conformi-ty to the church, repealed by ſection the third of the toleration-act, which frees diſſenters from all eccleſiaſtical cenſures, and conſequently from thoſe to which they were expoſed by the re-vived acts of Edward the Sixth. When, therefore, the learned Commentator mentions 23 Eliz. c. 1. 35 Eliz. c. 1. 17 Car. II. c. 2. 22 Car. II. c. 1. as acts from which the Diſſenters are exempted by the toleration-act, he ought above all to have men-tioned the 14th clauſe of the act of uniformity, and thoſe ec-cleſiaſtical cenſures to which the Diſſenters were liable by the revived acts of Edward the Sixth. His not having done this may poſſibly lead ſome of his readers to conclude, that not-withſtanding the ſubſequent penal laws againſt Diſſenters, are repealed,

which exempts all Diſſenters, except Papiſts, and ſuch as deny the Trinity, from all penal laws, &c. ſhould it not have been ſaid, that all penal laws for nonconformity are *repealed*, with regard to thoſe Diſſenters, who are qualified as the act directs? And would it not have been proper to mention, that the Diſſenters are freed from proſecution in the eccleſiaſtical courts? And that there is nothing, therefore, in the law of England, which can make mere nonconformity a crime, any more than liable to penalty?

The SECOND obſervation I would make is this: That both the crime and penalty of mere Proteſtant nonconformity are aboliſhed by the act of toleration, is evident from the protecting clauſes of that act: which, in the words of a great lawyer, "have not only exempted the "Diſſenters way of worſhip from puniſhment, but "rendered it innocent and lawful; have put it, not merely under the connivance, but under the protection of "the law, have *eſtabliſhed it*. For nothing can be plainer, "than that the law protects nothing in that very reſpect, "in which it is, at the ſame time, in the eye of the "law a crime. Diſſenters by the act of toleration, there-"fore, are reſtored to a legal conſideration and capacity." And this is a view of their condition under the toleration-act, of great importance. For many conſequences will from hence follow, which are not mentioned in the act; and which would not follow, if the act amounted to nothing more than a ſuſpenſion of penalty. For inſtance,

repealed, yet thoſe acts of uniformity on which the original obligation to conformity was founded are ſtill in force with regard to them; and that accordingly they are obliged to conformity de jure, though excuſed from the penalties of certain laws by which it is enforced; whereas an attention to the repeal of the acts which I have mentioned, in reſpect to Diſſenters, would, I think, clearly ſhew that they are under no ſuch obligation, and conſequently are not criminal in their Nonconformity; and, I hope, therefore, that theſe plain matters of fact, which are ſo material to the right deciſion of the queſtion between us, will not be omitted in any future edition of the Commentaries.

previous

previous to this act, a legacy, left to diſſenting miniſters and diſſenting congregations, was not eſteemed a valid one; becauſe the law knew no ſuch perſons, and no ſuch aſſemblies; and it was left to what the law called ſuperſtitious purpoſes. But will it be ſaid in any court in England, that ſuch a legacy is not a valid one now? and yet there being nothing ſaid of this in the toleration-act, it can only follow, conſequentially, from the Diſſenters being reſtored by that act to a legal conſideration and capacity, and being no longer criminal in the eye of the law, as they were before that act was enacted.

The THIRD obſervation which I would make is: That the unanimous judgment of the commiſſioners delegates *, and of the Houſe of Lords † affirming that judgment, in the great cauſe between the city of London and the Diſſenters, concerning the fine inflicted by a by-law of the city on thoſe who refuſed the office of ſheriff, was grounded entirely on this opinion, "That the toleration-act "removed the crime as well as the penalty of mere non-"conformity."

The caſe, you know, was this: By the corporation-act no perſon can be placed, choſen, or elected into any office of or belonging to the government of any corporation, who hath not taken the ſacrament in the church of England within a year preceding the time of ſuch election. The defendant * pleaded, That not having received the ſacrament at church within a year preceding, he was both uneligible and diſabled from ſerving; and that, being a Diſſenter within the deſcription of the toleration-act, and thereby freed from all obligation to take the ſacrament at

* Lord Chief Baron Parker, Mr. Juſtice Foſter, Mr. Juſtice Bathurſt, and Mr. Juſtice Wilmot, now Lord Chief Juſtice of the Common-Pleas. They delivered their opinions *ſeriatim*, on the 5th of July 1762, after hearing counſel ſeveral days. Lord Chief Juſtice Willes, who was firſt in the commiſſion, died before judgment given.

† On the 4th of February 1767.

* Allen Evans, Eſq;

church,

church, his omitting it was no way criminal; and that, therefore, the disability he had incurred was a lawful plea in bar of this action, to excuse him from the fine imposed upon those who refused the office of sheriff. The city having brought the cause before the House of Lords by appeal from the commissioners delegates, who had given judgment for the defendant; the House ordered this question to be proposed for the opinion of the Judges, How far the defendant might, in the present case, be allowed to plead his disability in bar of the action brought against him?

It was allowed on all hands, that if his nonconformity, and his consequent disability, was criminal, he could not plead it.

And for this reason one of the Judges * was of opinion, (contrary to the rest of his brethren), that the defendant's disability, in the present case, could not be pleaded; because, as he said, the toleration-act amounted to *nothing more than an exemption of Protestant Dissenters from the penalties of certain laws therein particularly mentioned*; and the corporation-act not being mentioned therein, the toleration-act could have no influence upon it; and therefore his disability, incurred by his nonformity in consequence of the corporation-act, was, in his opinion, a culpable one, and rendered him liable to any penalties, to which any others are liable for refusing to serve the office of sheriff; inasmuch as no man can disable himself: but if he refused to take the sacrament according to the rites of the church of England, he disabled himself; and the fine imposed was a punishment upon him for the crime of his nonconformity, from which he could plead no legal exemption.

But all the other Judges † were of a contrary opinion, That the corporation-act expressly rendered the Dissenters uneligible,

* Mr. Baron Perrott.

† Mr. Justice Hewitt, now Lord Lifford, and Chancellor of Ireland; Mr. Justice Aston, Mr. Justice Gould, Mr. Baron Adams,

uneligible and incapable of ſerving; its deſign being to keep them out, as perſons at that time ſuppoſed to be diſaffected to the government: and though the diſability ariſing from hence could not *then* have been pleaded againſt ſuch an action as is now brought againſt the defendant, nonconformity being *then* in the eye of the law a crime, and no man being allowed to excuſe one crime by another; yet the caſe is different ſince the toleration-act was enacted, *that act* amounting to *much more* than a mere exemption from the penalties of certain laws, and having an influence upon the corporation-act conſequentially, though the corporation-act is not mentioned therein; by freeing the Diſſenters from all obligation to take the ſacrament at church, aboliſhing the crime as well as penalties of nonconformity, and allowing and protecting the diſſenting worſhip. The defendant's diſability, therefore, they ſaid, was a lawful one, a legal and reaſonable, not a criminal excuſe; it was not in the ſenſe of the law diſabling himſelf; the meaning of that maxim, "That a man ſhall not "diſable himſelf," being only this, that no man ſhall diſable himſelf by his own wilful fault or crime; and nonconformity being no longer a crime ſince the toleration-act was enacted, he is diſabled by judgment of parliament, namely, by the corporation-act, without the concurrence or intervention of any crime of his own; and therefore he may plead this diſability in bar of the preſent action.

So that the arguments of the Judges turned upon this ſingle point, That the toleration-act removed the *crime* as well as the *penalties* of nonconformity; and in this they all, except one, agreed. The whole was ſummed up, and the reaſoning on the oppoſite ſide examined and confuted, with his uſual perſpicuity and force of argument, by Lord Mansfield *; and upon this ground the Houſe of Lords affirmed, *nemine contradicente*, the judgment of the commiſſioners delegates.

Adams, Mr. Baron Smythe, Mr. Juſtice Clive. Mr. Juſtice Yates was at that time ill, and incapable of being preſent.

* See his Lordſhip's ſpeech in the appendix, No. II.

In

In ſtating, therefore, the caſe of the Diſſenters under the toleration-act, ſhould not ſome notice have been taken of the protecting clauſes of that act *, and of their influence and operation upon the legal condition and capacity of the Diſſenters? Surely the ſuſpenſion of penalties is not all that this act amounts to.

Whether the toleration-act is extenſive enough as to thoſe who *ſhould be* its objects, is one queſtion; what is its meaning and intent, with reſpect to thoſe who *are* its objects, is another. Mere nonconformiſts with reſpect to the worſhip, diſcipline, and government of the church, are certainly its objects: and I think it ought not to have been limited, as it is, in regard to the doctrinal articles of religion. But ſtill, with reſpect to thoſe perſons whom it does comprehend, that is, the mere nonconformiſts to the conſtitution and rites of the church, it puts them on a very liberal footing, not on that of *connivance* only, but of *protection* alſo. And the more the idea of *legal protection* is examined, the more will it appear to juſtify the ſtrong expreſſion, which the Noble Lord before mentioned uſed concerning the diſſenting worſhip, that it is ESTABLISHED. If the juſtices of the peace at the quarter-ſeſſions, or the regiſter of the biſhop's court ſhould refuſe to regiſter a diſſenting place of worſhip, a *mandamus* always is and muſt be granted, upon application, in Weſtminſter-hall, to compel them to the diſcharge of their duty. And is it not abſurd to ſuppoſe, that a *mandamus* muſt iſſue in a caſe, which the law regards as criminal? Is not the law to be conſidered as giving its *whole ſanction*, and exerting its *whole energy*, in reſpect to whatever juſtifies and requires a *mandamus*? and does not this amount, ſtrictly ſpeaking, to the idea of the word *eſtabliſhed*?

When

* In the laſt edition of the Commentaries the protecting clauſes are mentioned, but no concluſion is drawn from them; nor is it mentioned, as I before obſerved it ſhould have been, that Diſſenters under this act are expreſsly freed from all eccleſiaſtical cenſures; much leſs is it ſaid, as the reſult of the whole, that they

When the late incomparable Speaker of the Houſe of Commons, Mr. Onſlow, was informed of the expreſſion, which the learned and Noble Lord uſed on this occaſion, he obſerved, in a converſation with which he honoured me, that this was the language he himſelf had always held; that, as far as the authority of the law could go in point of *protection*, the Diſſenters were as *truly eſtabliſhed* as the church of England *; and that an eſtabliſhed church, as diſtinguiſhed from their places of worſhip, was properly ſpeaking, only an *endowed church*; a church, which the law not only protected, but endowed with temporalities for its peculiar ſupport and encouragement †.

If it ſhould ſo happen, after all, that I ſhould have miſtaken your meaning, and that your idea of the condition of the Diſſenters under the toleration-act is the ſame

they are reſtored to a legal capacity, and neither puniſhable nor criminal on account of their nonconformity.

* The penalties inflicted by the act of toleration on thoſe who diſturb any diſſenting congregation for divine worſhip, or miſuſe the preacher, are preciſely the ſame as on thoſe who diſturb the congregation, or miſuſe the preacher, in any cathedral, pariſh church, or chapel; and diſſenting miniſters, as well as the clergy of the church of England, are excuſed from all burdenſome offices.

† I ſuppoſe it is upon this idea, that, ſince the toleration, it hath been the invariable practice of our Sovereigns, in their ſpeeches to their parliaments upon their acceſſion, after declaring their affection to the church of England, and reſolution to ſupport it, to add, That they will maintain the toleration inviolable. When this was done at the commencement of the preſent reign, the Lords, in their addreſs of thanks, paid a juſt and expreſſive compliment to the toleration, by ſtiling it, THAT SUREST CEMENT OF THE PROTESTANT INTEREST IN THESE KINGDOMS. And this expreſſion, in anſwer to that part of the royal ſpeech, which contained a promiſe of preſerving and *ſtrengthening* the conſtitution in *church* and ſtate, was the more appoſite, as it conveyed this certain truth, That the union of Proteſtants among themſelves in mutual affection and eſteem, however they may differ in formularies of doctrine or rites of worſhip, is the beſt ſupport of their common intereſt; and that the church of England, in particular, can never be more *ſtrengthened*, or placed on a firmer foundation, than by encouraging the generous principles of *toleration*, and an impartial regard to the right of *private judgment*.

with

with mine, that they are freed from the *crime* as well as penalties of their nonconformity; I apprehend, ſome alteration will ſtill be neceſſary in your repreſentation of the purport of the toleration-act: which repreſentation, as it now ſtands, leads your reader naturally, and almoſt neceſſarily, to conclude, that your apprehenſion of the deſign of that act is not ſo enlarged as, in my humble opinion, it ought to be. And if, upon further reflection, you are convinced of this, I am very ſure, from the ſpecimens you have already given of your candor in ſimilar caſes, you will take care to guard againſt any miſapprehenſion of your judgment in future editions of your incomparable book. That openneſs to conviction, and that conſequent diſpoſition to correct miſtakes, which you have diſcovered, does you more honour, in a moral view, than all your intellectual abilities, great as they are; inaſmuch as integrity and ingenuity of heart deſerve, and will receive from thoſe whoſe good opinion is worth regarding, much more applauſe than the acuteſt diſcernment, or the profoundeſt and moſt accurate judgment. I am,

SIR,

with great eſteem,

your obedient humble ſervant,

E. F.

LETTER II.

SIR,

YOU have a diſpoſition, I am perſuaded, too ingenuous and liberal, to be offended at a candid, though free diſcuſſion of your ſentiments: I ſhall make no apology, therefore, for laying before you my remarks on ſome other paſſages, as I have already done on one particular point, in your juſtly-admired Commentaries on the laws of England.

When Dr. Prieſtley obſerved, in his Remarks, p. 48. that you quoted with approbation * the ſtatute of William the Third againſt "perſons educated in the Chriſtian religion, or profeſſing the ſame, who ſhall by writing, "printing, teaching, or advised ſpeaking, deny any one "of the perſons in the Holy Trinity to be God, or maintain that there are more gods than one:" by which ſtatute they are made liable to the pains and penalties inflicted by the ſame ſtatute on apoſtacy; that is, "for the "firſt offence, they are rendered incapable of holding any "office or place of truſt; and for the ſecond, are rendered incapable of bringing any action, being guardian, executor, legatee, or purchaſer of lands; and are to ſuffer three years impriſonment without bail †:" I ſay, when Dr. Prieſtly remarked, that you cited this ſevere ſtatute with approbation, you diſclaimed the imputation in

* Comment. vol. iv. p. 50.

† The Emperor Marcian, in an edict againſt the Eutychians and Apollinariſts, rendered them incapable of diſpoſing of their eſtates, of making a will, or of inheriting any thing by the will of others, or by deed of gift. *Concil. tom. 2. p. 678. edit. Hard.* Some of the clauſes in the act of parliament ſeem to have been copied from this worthy original.

your

your Reply *; and alledged, that you "barely recited "the ſtatute, without either approving or diſapproving it." It will ſurely then, be proper to omit theſe words in your Commentaries †, which you will find a little before your citation

* Reply, p. 6.

† Comment p. 49. This paſſage is altered in the new edition in the following manner: "Every thing is now as it ſhould "be *with reſpect to the ſpiritual cognizance, and ſpiritual puniſhment of hereſy*; unleſs perhaps that the crime ought to be "more ſtrictly defined, and no proſecution permitted, even in "the eccleſiaſtical courts, till the tenets in queſtion are by proper authority previouſly declared to be heretical. Under theſe "reſtrictions, it ſeems neceſſary for the ſupport of the national "religion, that the officers of the church ſhould have power to "cenſure heretics; yet *not to harraſs them with temporal penalties, much leſs* to exterminate or deſtroy them." If the worthy author means, that the cenſures of the church are not to extend to the infliction of any temporal penalties on heretics, as I muſt ſuppoſe he does, this is an amendment of very great importance; tacitly condemning a power of excommunication accompanied with any ſuch penalties, eſpecially when, as in the church of England, that cenſure deprives men of all the privileges of ſociety; of ſuing an action, being witneſſes, making a will, receiving a legacy, and, after a certain time, renders them liable to impriſonment; and confining it, as it ought to be confined, to a mere excluſion from chriſtian communion, which affects the perſon ſo cenſured in none of his civil rights.

But if the author intends, which I can hardly allow myſelf to ſurmize, that the cenſures of the church may include temporal penalties, though not in ſuch a degree as to *harraſs* the heretic; then all the arguments which I have urged againſt the infliction of any kind or degree of temporal penalties in ſuch caſes, will be ſtill applicable to the paſſage as it is now amended.

"The ſpiritual cognizance and ſpiritual puniſhment of here-"ſy" *ſhould* ex vi termini, exclude all temporal penalty; but whether in our eccleſiaſtical conſtitution "all things are as they "ſhould be" in this reſpect, I think, with ſubmiſſion to the learned gentleman, deſerves to be reconſidered. The act for the repeal of the writ de hæretico comburendo, 29 C. II. c. 9. ſect. 2. expreſsly provides, that the judges of the eccleſiaſtical courts ſhall have a power to puniſh hereſy by excommunication, (which, as we have ſeen, includes very *harraſſing* temporal penalties) by deprivation, degradation, and other eccleſiaſtical cenſures, only not extending to death: which is the ſole exception. When the learned commentator therefore grants that heretics "are "not to be harraſſed with temporal penalties, much leſs to be

citation of this ſtatute, "Every thing is now as it ſhould "be, unleſs perhaps that hereſy ought to be more ſtrictly "defined," &c. This, your readers will be apt to think, amounts to an approbation of all that follows; and particularly of the act here referred to, which is preſently after quoted as now in force; and therefore, as one of the things which, you ſay, "are as they ſhould be."

Truly, Sir, it is much to be deſired, that you would review this whole paragraph with attention. The only objection which you make to the intolerant and perſecuting laws now in force againſt hereſy is, that "hereſy is not "defined in them with ſufficient preciſion;" and, you think, "no proſecution ſhould be permitted, even in the "eccleſiaſtical courts, till the tenets in queſtion are, by "proper authority, previouſly declared to be heretical." And provided this be done, "every thing is then," "you ſay, "as it ſhould be."

"exterminated or deſtroyed," he ſeems virtually to deny, what he had juſt before too incautiouſly affirmed, that "all things are now as they ſhould be, "with reſpect to the ſpiritual cog-"nizance and ſpiritual puniſhment of hereſy."

However, on the whole, I am inclined to think, by the conceſſion, that heretics are not to be harraſſed with temporal penalties, he intended to declare againſt the uſe of any temporal penalties in caſes of hereſy. And I only wiſh that he had expreſſed his meaning ſo preciſely, as to exclude all poſſibility of the ſevereſt critic's putting a leſs favourable conſtruction upon his words; and that before he had declared his approbation of the preſent ſtate of our eccleſiaſtical conſtitution, in regard to what he calls the ſpiritual cognizance and ſpiritual puniſhment of hereſy, he had well conſidered to what that approbation amounts: whether it does not imply more than any one, who is an enemy to harraſſing hereticks with temporal penalties, will undertake to defend. I ſubmit it therefore to the conſideration of the learned gentleman himſelf, whether it is not neceſſary to make ſome further alteration in this paragraph, in juſtice to the liberality of his own ſentiments, and to prevent his authority being produced in ſupport of a power veſted in eccleſiaſtical governors, of cenſuring and puniſhing heretics in a manner which he ſeems to diſapprove.

So

So that, in your opinion, it is fit, that hereſy ſhould be puniſhed with temporal penalties; only care ſhould be taken, that what is hereſy be firſt ſettled by proper authority *. But here the queſtion occurs, What is proper authority? and where is it lodged? I ſuppoſe, Sir, you will place it either with the eccleſiaſtical governors, or with the legiſlature. But in the hands of either, it will certainly amount to nothing more than human authority, the authority of fallible men; which, I apprehend, upon examination, will be found to be no authority at all in the preſent caſe, that is, in defining what is true faith, and what is hereſy, and marking out their reſpective boundaries.

If the ſcripture is to determine for us, the point, I think, is clearly decided. For our bleſſed Saviour hath commanded his diſciples not to be "called maſters; for," ſaith he, "one is your Maſter, even Chriſt, and all ye are brethren †;" and this he ſaid in oppoſition to the authority which the Jewiſh rabbies aſſumed, in deciding queſtions of their law. And the apoſtles, who certainly, if any perſons, might have pretended to authority in matters of

* The nature of hereſy, in the ſcripture ſenſe of the word I think, hath been very much miſtaken. The heretics, whom, in the New Teſtament, we are directed to avoid, were not the humble, modeſt, and peaceable, tho' erroneous Chriſtians, who adhered to the authority of Chriſt, and deſired to know and do his will; but the proud, pragmatical, turbulent party-men, who diſturbed and divided the church by their impoſitions, and innovations in the terms of brotherly affection and Chriſtian communion, and by aſſuming an authority over their fellow Chriſtians. Hereſy, in the ſenſe of ſcripture, doth not conſiſt in ſimple error; nor were thoſe hereticks, who were anathematized and perſecuted; but only thoſe who anathematized and perſecuted others, refuſing to acknowledge them for true Chriſtians, on account of their ſuppoſed or real miſtakes. Whoſoever carefully and conſcientiouſly conſults the ſacred oracles, with a deſire of knowing and doing the will of Chriſt, cannot be an heretic in the ſcripture-meaning of the expreſſion. See Hallet's Notes and Diſcourſes, vol. 3. diſc. ix. throughout, eſpecially p. 390.

† Matth. xxiii. 8, 10.

faith, declared, that they "had no dominion over the "faith" of Chriſtians; but were "only helpers of their joy *." They appealed to reaſon and conſcience, and referred the final deciſion to every man's own private judgment: "We ſpeak as unto wiſe men; judge ye what "we ſay †." The Bereans are commended for "ſearching the ſcriptures" of the Old Teſtament daily," to ſee "whether the things" which the apoſtles declared to them "were ſo" as they reported ‡. And it is the duty of every Chriſtian to endeavour, for himſelf, to underſtand the ſacred oracles, as well as he is able, in the uſe of all the means and helps which Divine Providence puts in his power §.

Indeed, every man's private perſuaſion or belief, muſt be founded upon evidence propoſed to his *own mind*; and he cannot but believe, according as things appear to HIMSELF, not to others; to his own underſtanding, not to that of any other man. Conviction is always produced by the *light* which is ſtruck into the mind; and never by compulſion, or the force of human authority ‖.

But

* 2 Cor. i. 24. † 1 Cor. x. 15. ‡ Acts xvii. 11.

§ Human helps and aſſiſtances, while they are only employed to open and inform the underſtanding, are very deſirable and uſeful. But human authority, ſitting in judgment on points of faith, and deciding caſes of hereſy, and controuling, without enlightening, our underſtandings, is a very different thing. There is, ſurely, ſufficient room for our receiving inſtruction and aſſiſtance in matters of religion, without being deprived of our right of judging, in the laſt reſort, for ourſelves. And that we muſt do in oppoſition to all human authority, in whatſoever hands it be lodged, and with whatſoever venerable titles it comes recommended; or elſe we violate our allegiance to Chriſt, the only lawgiver and king in his church.

‖ If it be urged, that we believe many things upon *human authority*: I admit it, in caſe by authority we mean *teſtimony*. But there is a manifeſt difference between human teſtimony, as to matters of fact: and human authority, as to matters of opinion, and principles of truth. The former may be, and often is, a rational ground of belief; the latter is believing upon no evidence,

But it may be alledged, perhaps, that other mens underſtandings are better, and more penetrating and judicious than ours; or, that great numbers, eſpecially of perſons venerable for their age, as well as for their piety and learning, are more likely to be in the right, than a few individuals; and that, conſequently, it will be *ſafer* to be guided by their judgments than by our own. To this I reply: That a man's own underſtanding, be it more or leſs judicious, is the only faculty which God hath given him to diſtinguiſh truth from error: and as every man is accountable only for the uſe of his own underſtanding, not for that of other mens; conſequently, his ſafety conſiſts, not in giving up his own to the direction and controul of others, but in uſing it himſelf to the beſt advantage. And ſhould he, in the careful and conſcientious uſe of it, err; that error will never be imputed to him as a crime: Whereas, if he follows the judgment of other men, though ever ſo wiſe and learned, contrary to his own ſenſe of things; he may perchance *profeſs* what is *right*, but he *does* what is *wrong*, and is highly criminal in the ſight of God. For, the profeſſion of any doctrine ſhould always follow conviction of the truth of it; at leaſt, a man muſt never profeſs what is contrary to his conviction. To embrace, or profeſs, any point which he does not believe to be true, in compliment to human authority, is exalting

evidence, and is a renunciation of reaſon. The authority or teſtimony of the apoſtles, and firſt teachers of Chriſtianity, was accompanied with divine credentials; and this rendered it a ſufficient foundation for the belief, both of the facts and doctrines they revealed. And, indeed, human teſtimony, under the influence of inſpiration, and ſupported by miraculous interpoſition, is *always* a juſt ground of our belief of religious truth, as well as facts; but the authoritative decrees and injunctions of fallible, uninſpired men, *never*. The former claim an abſolute regard, as being a proof and evidence of a divine miſſion; the latter are no evidences of religious truth, or ground of belief of it at all, and therefore deſerve no regard. And it ſeems very ſtrange, that men ſhould preſume to exact of us, what God himſelf does not; the belief and profeſſion of opinions for which we can perceive no ſort of evidence.

human into the place of *divine* authority; and saying in one word, That it is better to obey man than God.

So that for any man, or body of men, whether clergy or laity, to assume an authority, first, to define what is heresy, and then to condemn and punish it by temporal penalties, is the ready way to make men hypocrites; while it can, in no case, render them true believers or good men *. But not to insist upon this: what I would principally observe to you, Sir, who are by profession a lawyer, is:

That heresy not being sufficiently defined by our laws, seems to be no small security, in connection with the lenity of the times, that those laws will not be executed; on account of the difficulty of defining what is heresy; and, perhaps, of finding a jury, or even any ecclesiastical judges, that will be forward in defining it, where the law hath left it doubtful and undefined. What, therefore, you, Sir, imagine a defect in the law, which ought to be supplied, appears to me to be a circumstance very favourable to the secure enjoyment of the rights of conscience; and, I hope, criminal prosecutions for opinion, either in civil or ecclesiastical courts, will never be rendered more easy and feasible, than they are at present.

* Submitting to the decisions of human authority in matters of faith, is *sometimes* prejudicial to, and even subversive of, true religion, where it does not issue in downright hypocrisy. For, as, on the one hand, by the exercise of our rational faculties in searching after truth, we are not only likely to arrive at it, but to improve in the love of it, in candor, docility, and openness to conviction; and are disposed to submit to its influence: so, on the contrary, in *proportion as we resign ourselves* to the conduct of human authority, truth loses its charms, and its influence over us; and we become blind to its clearest evidences, and brightest characters, and are thus prepared to be led into the most absurd superstitions, and vilest corruptions of religion. And this is the case among all parties, in the degree in which they give up the free exercise of their understandings, and take human authority for their guide.

The

The next enquiry, on ſuppoſition hereſy is cognizable and puniſhable by human authority (as you ſeem to think) naturally is: What that puniſhment ſhall be?

You tell us, that, "under theſe reſtrictions" (namely, that hereſy ſhould be more ſtrictly defined; and no proſecution permitted, till the hereſy is by proper authority aſcertained) "it ſeems neceſſary, for the ſupport of the national religion, that the officers of the church ſhould "have power to cenſure heretics, but not to exterminate "or deſtroy them *." In this aſſertion is it not plainly ſuppoſed, that the cenſures of the church are to be attended with temporal penalties? only not ſo as to exterminate or deſtroy the heretic. In the name of humanity, Sir, is this the only exception to the extent and effect of the church's cenſures, that they ſhall not reach to utter extermination? Are all other pains and penalties proper, in whatſoever degree they are inflicted, which affect only a man's liberty or property, provided he is not deſtroyed thereby? If this be your meaning, (and, I think, you ſhould have left no ground for ſuſpicion that it is your meaning, if it is not) what more ample ſcope could any perſecutor deſire for his wanton cruelty, than you allow; unleſs, like another Bonner, he thirſted for human blood? —Excuſe me, Sir, the warmth of my expreſſion. This ſentence of yours muſt, ſurely, have dropped from you inadvertently; and can never ſeriouſly be intended to mean, what it ſeems to imply.

To examine the point more thoroughly: Is the infliction of temporal penalties upon heretics, really neceſſary to the ſupport of a national eſtabliſhment? If ſo, how comes it to paſs, that a national eſtabliſhment is in its nature ſo oppoſite to the genius of Chriſtianity, of that kingdom which is not of this world, and which conſiſts not in any thing this world can beſtow or ſecure; but only in

* Comment. vol. iv. p. 49.

righteouſneſs, truth, and peace? Religion is ſeated in the heart of man, and converſant with the inward principles and temper of the mind; and it cannot, therefore, properly ſpeaking, be eſtabliſhed by human laws, or enforced by temporal puniſhments. There is nothing in a fine, or a dungeon, or in any other penalty which the magiſtrate can inflict, that is calculated to produce conviction. Truth can only be ſupported and propagated by reaſon and argument; in conjunction with that mild and perſuaſive inſinuation, and that openneſs and candor, and apparent benevolence in its advocates, which are ſuited to invite mens attention, and diſpoſe them to examination. No civil puniſhments are adapted to enlighten the underſtanding, or to conciliate the affections. And therefore the "weapons" which the miniſters of religion (or, in your ſtile, "the officers of the church") are directed to uſe "are not carnal *," but ſpiritual.

For my own part, I believe, it would have fared much better with the intereſt of true religion, if it had been left to make its way by the force of its own native excellence, and evidence only; than it hath done ſince it hath been incorporated with civil conſtitutions, and eſtabliſhed by human laws. For, even temporal emoluments, (leaving penalties out of the queſtion) annexed to the profeſſion of any form of religion, in ſuch degree as to excite mens avarice and ambition, and diſpoſe them to mean an unworthy, not to ſay wicked compliances to obtain or ſecure them; have done, I apprehend, infinite miſchief to the religious and moral characters of multitudes in all ages and countries †.

But

* 2 Cor. x. 4.

† The ingenious author of the Free Enquiry into the nature and origin of evil, gives us a very ſtrong picture in a different point of view, of the bad effects of religious eſtabliſhments; namely, of the ill influence which they have, both on the purity of religion and the liberties of mankind. "The moment," ſaith

But when such national establishments, besides the rewards which they bestow upon their church-officers, are guarded

saith he, "any religion becomes national, or established, its "purity must certainly be lost, because it is then impossible to "keep it unconnected with mens interests; and if connected, it "must inevitably be perverted by them," p. 225. edit. 4. Again, "that very order of men, who are maintained to support its in-"terests, will sacrifice them to their own," p. 225, 226. "By "degrees knaves will join them, fools believe them, and cow-"ards be afraid of them; and having gained so considerable a "part of the world to their interests, they will erect an indepen-"dent dominion among themselves dangerous to the liberties of "mankind; and representing all those who oppose their tyranny "as God's enemies, teach it to be meritorious in his sight to "persecute them in this world, and damn them in another. "Hence must arise Hierarchies, Inquisitions, and Popery; for "Popery is but the consummation of that tyranny which every "religious system in the hands of men is in perpetual pursuit of, "and whose principles they are all ready to adopt, whenever "they are fortunate enough to meet with its success." See p. 223---230. The freedom of these sentiments having "given "some offence," as being supposed to contain "a reflection up-"on all national churches, and a persuasion to schism, and dis-"sention;" the Author makes this apology in the preface to his fourth edition, p. 25. "Those," saith he, "who think thus, "totally misapprehend the tenor of this whole work, which en-"deavours to prove, that every thing human must be attended "with evils, which therefore ought to be submitted to with pa-"tience and resignation; that many imperfections will adhere "to all governments and religions in the hands of men; but that "these, unless they rise to an intolerable degree, will not jus-"tify our resistance to the one, or *our dissention from the other*." And to make it the more apparent that he is no enemy to establishments, he adds, that were no religion to be established at all, "it would let in such an inundation of Enthusiasm and "contradictory absurdities, as must in a short time *destroy not "only all religion, but all peace and morality whatsoever*: of "which no one can entertain the least doubt, who is not totally "unacquainted both with the nature and history of mankind." Though the Author had before painted, in very lively colours, the ill effects of that connection between religion and mens secular interests, which subsists in national establishments; he here represents those effects to be of little consequence, in comparison of that "inundation of enthusiasm and contradictory absur-"dities, which," in his opinion, were there no establishment, "would,

guarded by temporal penalties, inflicted on all who cannot follow the lead of the public wisdom and public conscience;

" would, in a short time, destroy not only all religion, but all " peace and morality." On the contrary, I think it would be easy to shew from the history of mankind, that greater evils have been produced by religious establishments, than either have been, or are likely, or I think possible to be, by the want of them. The grossest enthusiasm and absurdity have often made a part of them, and have been patronized and upheld by those who have been most zealous for them, sometimes by persecution and violence, at the expence of every principle of humanity and justice. But supposing there were no establishments, why must " all religion be destroyed?" I rather think the free exercise of the human understanding, without any byass from interest, would tend very much to promote both the purity and progress of religion. And I have too high an idea of the strength of its evidence, and the charms of its excellence, and of its interest in the protection of the great Sovereign of the Universe, to imagine its existence depends upon human establishments. It is certain, fools will be fools, and enthusiasts will be enthusiasts; nor will establishments prevent their acting agreeably to their real character. If recourse be had to penal laws and to intolerant measures, it will augment and inflame the disease; and if the caustic is continued till the patient is destroyed, still enthusiasm and absurdity will spread like an infection, and not being tolerated, will perhaps, in some shape or other, take possession of the establishment itself; either under false colours and by the artifice of their votaries, or through the folly of those, who in the wantonness of power and weakness of intellect, frequently bring in, and suppose, more extravagant absurdities, and things more destructive of true religion, themselves; than they refuse to tolerate in others. It had been well, if this conduct had been wholly confined to the church of Rome.

Again, why must " all peace and morality be destroyed." if there be no religious establishments? Does the existence of common sense, and a regard to the essential interests of society, wholly depend upon such establishments? Can magistrates do nothing by enacting and executing wholsome laws, to preserve the publick peace and order? Will no wise, no good, no publick-spirited men, (not to say ministers of religion) promote the same salutary end? or will there be no such persons existing?

But though the evils of establishments are very great and numerous, as the author had represented them, yet he saith, " the " imperfections which adhere to all governments and religions " unless they arise to an intolerable degree, will not justify our " resistance

ſcience; they are then neither better nor worſe than notorious violations of the laws of Chriſt, and of his royal prero-

"reſiſtance to the one, or *our diſſention from the other.*" Reſiſtance or force, I own, ſhould not be employed againſt civil government, except in caſes of extreme neceſſity, and when what is ſtiled government is no longer government, but tyranny: nor indeed ſhould any attempt be made to overturn a religious eſtabliſhment by force, unleſs its exiſtence is incompatible with the ſafety or eſſential rights of others; as indeed it always is, when it will not allow a toleration; and in that caſe its deſtruction, in any method ſuited to accompliſh it, is mere ſelf-defence. The Author therefore ſhould have compared with reſiſtance to civil government, not a diſſent from an eſtabliſhment, but an attempt to overthrow an eſtabliſhment by force; becauſe, though civil government cannot allow or ſuppoſe reſiſtance or force to be uſed againſt itſelf (for that as I have ſaid, becomes warrantable only when it ceaſes to be government); yet that eſtabliſhment which does not always allow a diſſent from itſelf, is a mere eccleſiaſtical tyranny: for liberty of religious diſſent is a right incident to human nature, and a right, which the legiſlature of this country hath accordingly recognized by the Toleration; which, nevertheleſs, this Author ſtrangely compares to an illegal reſiſtance of the civil power.

He further obſerves, that "from a diſſent can accrue no remedy to the evils of an eſtabliſhment," p. 26. It muſt however be admitted, that it ſerves at leaſt to correct the virulence of the diſeaſe, and to retard its progreſs towards an intire ſtate of corruption, or tyranny; to which, according to his own account, it naturally tends. From a ſlight attention to the hiſtory of the church of England from the time of the reformation, we may eaſily collect, that the Puritans and Diſſenters have had no inconſiderable ſhare, eſpecially at certain periods, in ſtopping the progreſs of eccleſiaſtical corruption, and keeping down that exorbitant power, which the Hierarchy otherwiſe might, and certainly would, if the Author's account of its tendency be juſt, have long ſince attained. And this, I hope he will admit to be no contemptible ſervice.

In conſequence of ſome things I have advanced, it will perhaps be aſked, whether I aim at ſubverting all eccleſiaſtical eſtabliſhments? The reader may be aſſured, I am not ſo viſionary as to aim at an object, which is wholly out of ſight, and not at all to be expected. But I am perſuaded, that ſuch eſtabliſhments are not vindicable de jure, or perfectly compatible with the right every man hath of judging and acting for himſelf in matters of religion; whatever ſpecious arguments may be adduced to prove their expedience, or at leaſt that they are, as this Author ſuppoſes, neceſſary

prerogative? they are deſtructive of the very deſign of his religion, which is of no value if the profeſſion and practice of it be not a free and reaſonable ſervice: and are an open invaſion of the common rights of humanity.

But perhaps you will ſay, I am leading you into "a "theological controverſy *." I ſhall only refer it, therefore, to your further conſideration, whether the *law* cannot ſupport the church in all her *rights* and *immunities*, unleſs ſhe is inveſted likewiſe with the unwarrantable and dangerous power of *puniſhing* thoſe who call in queſtion, or diſſent from her eſtabliſhed formularies of doctrine or worſhip.

If you only mean, indeed, by the cenſures of the church, her refuſing communion to thoſe who differ from her in articles of faith which ſhe thinks important, without allowing her to inforce thoſe cenſures by any temporal penalties; I acknowledge, I have then miſunderſtood you. But I appeal to yourſelf, Sir, upon further reflection, whether that miſtake, if it be one, is not owing to your aſſigning no other limitation to the effects of thoſe cen-

ceſſary evils. And if this be our opinion concerning eſtabliſhments, that they are not ſtrictly vindicable on principles of liberty, we ſhall eaſily perceive, that an eſtabliſhment without a toleration is deteſtable; and that in an eſtabliſhment with a toleration, it is the toleration which is the moſt ſacred part of the conſtitution; that being the aſſertion of religious liberty which is a natural right, whereas an eſtabliſhment is always, more or leſs, an invaſion or infringement of it. And ſhould any of thoſe who acquieſce in religious eſtabliſhments, happen to embrace ſuch ſentiments concerning them, I can ſee no worſe conſequence likely to ariſe, than that they would be made more zealous for reducing them to as near a conformity as poſſible, with chriſtian liberty and chriſtian ſimplicity: whereas high notions of the authority of eccleſiaſtical governors, or of the civil magiſtrate, in matters of religion, are apt to teach that "patient reſignation" of private conduct to publick judgment, which, though this ingenious author ſeems to think it very commendable, I am glad it is not my taſk to defend.

* See Reply to Dr. Prieſtley, p. 4.

ſures,

ſures, than that they ſhould not extend to "utter exter-
"mination and deſtruction."

I freely confeſs, I am ſo far from thinking, that any church hath a right to uſe temporal penalties to bring perſons to her own terms of communion, that, I apprehend, ſhe is inveſted with no authority to make any terms of communion at all, which Chriſt hath not made; and thoſe which he hath made, are only to be enforced by ſpiritual ſanctions; by his own authority as head of the church, by the dread of his diſpleaſure, and by the hope of his favour. And a national church, I apprehend, will ſtand much firmer upon this noble and extenſive foundation of reaſon and ſcripture, than on the narrow and feeble one of human authority, fenced as much as you pleaſe, with all the terrors of pains and penalties.

Perhaps it will be aſked, Are we to leave every man at liberty to propagate what ſentiments he pleaſes? It is my opinion, I profeſs, that truth is ſo far from ſuffering by free examination, that this is the only method in which ſhe can be effectually ſupported and propagated. But, with this idea I am not ſo happy as to be able to reconcile the following ſentiment: "I would not," you ſay, "be un-
"derſtood to derogate from the juſt rights of the national
"church, or to encourage a looſe latitude of propagating
"any crude undigeſted ſentiments in religious matters;
"of propagating, I ſay; for the bare entertaining them,
"without an endeavour to diffuſe them, ſeems hardly cog-
"nizable by any human authority *."

That indeed is very true, if by bare entertaining you mean merely believing; and a goood reaſon there is for it, becauſe the heart of man is inſcrutable; becauſe there is a *natural impoſſibility* for any human authority to interfere with the inward ſentiments of the mind, while they are concealed from outward obſervation. But if by entertaining you intend (contrary to the uſual ſenſe of the

* Comment. vol. iv. p. 49.

word,

word, and not very conſiſtently with your approving of our preſent laws againſt hereſy) to allow the profeſſion of ſuch ſentiments, provided men do not aim at diffuſing them; yet the moment reaſons are offered to ſupport or recommend that profeſſion, human authority may interpoſe, it ſeems; becauſe it is "one of the juſt rights "of "the national church, from which," you ſay, "you will "by no means derogate," to prevent "the propagation "of any crude undigeſted ſentiments in religious mat-"ters:" that is in reality, (for to this it amounts) any ſentiments different from thoſe by law eſtabliſhed; every eſtabliſhment ſuppoſing thoſe ſentiments to be crude and undigeſted, which are contrary to its own principles and practices. A maxim, which will vindicate the exerciſe of human authority in ſupport of every eſtabliſhment that ever was, or will be: Mohammediſm at Conſtantinople, Popery at Rome, Epiſcopacy in England, Preſbyterianiſm at Geneva, or in Scotland! For all the adherents to theſe ſeveral perſuaſions think, thoſe who differ from them entertain, at leaſt, *crude and undigeſted ſentiments in religious matters.* Indeed, this principle, purſued into its genuine conſequences, would have precluded the Reformation from Popery, and would even have ſtifled in its birth our holy religion itſelf. If the propagation of truth, or of ſuppoſed truth, in matters purely religious, is to be reſtrained by human authority, (whether you call it civil or eccleſiaſtical, is the ſame at laſt; for they are both alike exerciſed by fallible men): in that caſe, the ſucceſs of true religion in the world, depends wholly on the power of the magiſtrate, or on the majority; either of which may be as likely, at leaſt to be on the ſide of error as of truth.

From this idea, that the ſuppreſſion of hereſy, or the preventing the propagation of it, by temporal penalties, is neceſſary to the eſtabliſhment of truth, or of a church; have been derived all thoſe execrable and outrageous perſecutions, which have diſgraced not only our religion, but human nature itſelf. For there is a gradation, in this caſe,

caſe, as natural as it is common: the ſame principle which induces men, at firſt, to employ what are called moderate penalties, in order to compaſs ſo good an end as the ſuppreſſion of error, leading them (in caſe that end cannot *otherwiſe* be accompliſhed, that end which they think *muſt* be accompliſhed: the very ſame principle, I ſay, leading them) to the meaſures ſtill more and more ſevere and intolerant, till by degrees they are reconciled to the moſt inhuman perſecutions, and bloody maſſacres. And in caſe they do not proceed to ſuch lengths, to what ſhall we aſcribe it? to their principle? or to their humanity pleading againſt principle?

I am far, Sir, from inſinuating, that you hold all the conſequences which flow from the maxim you ſeem to entertain, namely, that temporal penalties may be employed in promoting truth and ſuppreſſing error: it is ſufficient for me to obſerve, that all thoſe poſitions muſt be erroneous, from which ſuch conſequences naturally follow.——I am, Sir, *&c.*

LETTER III.

SIR,

THOUGH the reaſoning in my laſt letter, may be applied to the caſe of apoſtacy, as well as hereſy; the caſe of renouncing Chriſtianity, or profeſſing Deiſm; yet as you have advanced ſome particular arguments for inflicting human puniſhment upon infidels, I ſhall take the liberty to give what you have offered a diſtinct conſideration; becauſe, I apprehend, it would be diſhonourable to the Chriſtian religion to be even ſuſpected to owe its preſervation, not to its own excellence and evidence, and the ſpecial protection of Providence, but to the terror of penal laws, and the ſword of the civil magiſtrate.

Having premiſed, that "the loſs of life is a heavier "penalty than the crime of apoſtacy deſerves;" you remark, that, "about the cloſe of the laſt century, the ci- "vil liberties to which we were then reſtored, being uſed "as a cloke of maliciouſneſs, and the moſt horrid doc- "trines, ſubverſive of all religion being publickly avowed "both in diſcourſe and writings, it was found neceſſary "again" (the puniſhment of death for this crime being become obſolete) "for the civil power to interpoſe, by not "admitting theſe miſcreants" (explained in the margin by *meſcroyantz*, the French word uſed in our ancient laws for unbelievers) "to the privileges of ſociety, who maintained "ſuch principles as deſtroyed all moral obligation. "To this end," you ſay, "it was enacted by a ſtatute 9 and 10 "Will. III. c. 32. that if any perſon educated in, or "having made profeſſion of, the Chriſtian religion, ſhall, "by writing, printing, teaching, or adviſed ſpeaking, deny "the Chriſtian religion to be true, or the holy ſcriptures

to

"to be of divine authority, he ſhall for the firſt offence, "be rendered incapable to hold any office or place of "truſt; and, for the ſecond, be rendered incapable of "bringing any action, being guardian, executor, legatee, "or purchaſer of lands and ſhall ſuffer three years impri-"ſonment without bail:" the ſame penalties, which have been already mentioned, as by this very ſtatute inflicted on Arianiſm.—And you had juſt before obſerved, that "all "affronts to Chriſtianity, or endeavours to depreciate its "efficacy, are highly deſerving of human puniſhment *."

I have already ſhewn, that principles or ſentiments relating to religion are not puniſhable by penal laws. The infliction of ſuch puniſhment, even when they are profeſſed, is out of the magiſtrate's province; as, when they

* Comment. vol iv. p. 44. In the new edition this paſſage is thus altered: "All affronts to Chriſtianity, or endeavours to "depri i te its efficacy, in thoſe who have once profeſſed it, are "highly deſerving of cenſure." If by *cenſure* the author means *blame*, as I think he muſt when he oppoſes it to human puniſhment; this is a very material amendment, which affords ground to ſuppoſe, he would have given a different turn to the immediately ſubſequent words, if he had conſidered them with due attention: "But yet," ſaith he, "the loſs of life is a heavier pe-"nalty than the offence, taken in a civil light, deſerves." An obſervation, which implies, I think, notwithſtanding the preceding conceſſion, that human puniſhment may be inflicted, though it ought not to be capital. And therefore I apprehend, that upon further reflection the worthy Commentator will alter theſe words, for the ſame reaſon that he altered the former; for I cannot ſuppoſe, ſo candid and reſpectable a writer, will retain any phraſeology which ſeems evidently to imply, what he will no longer venture to affirm.

If indeed any one ſhould ſuggeſt, that the word *cenſure*, in the connection in which it ſtands with the ſubſequent clauſe, is deſigned to convey the ſame idea with the exploded phraſe, *human puniſhment*, only in a more covert, and therefore leſs offenſive manner; I think it would be an uncandid and indecent reflection upon a Gentleman, who doubtleſs is incapable of aiming to impoſe upon his readers by ſtudied ambiguity of expreſſion. And therefore I repeat, that I have no doubt this paſſage will, upon another review, be ſo modified, as to be liable to no poſſible miſconſtruction.

are concealed, it is out of his power; for human laws have nothing to do with mere principles, but only with those overt acts arising from them, which are contrary to the peace and good order of society.

But it will be said, Hath the magistrate no concern with those principles which "destroy the foundation of "moral obligation?" that is, if I understand you right, which have a *tendency* to introduce immorality and licentiousness.

I allow, he may encourage amongst all sects, those general principles of religion and morality, on which the happiness of society depends. This he may, and should do, as *conservator* of the publick weal. But with regard to the belief or disbelief of religious principles, or religious systems; if he presumes to exercise his *authority* as a *judge*, in such cases, with a view of restraining and punishing those who embrace and profess what he dislikes, or dislike and explode what he embraces, on account of the supposed ill tendency of their principles; he goes beyond his province, which is confined to those effects of such principles, that is, to those actions, which affect the peace and good order of society; and every step he takes, he is in danger of trampling on the rights of conscience, and of invading the prerogative of the only arbiter of conscience, to whom alone men are accountable for professing, or not professing, religious sentiments and principles.

For, if the magistrate be possessed of a power to restrain and punish any principles relating to religion because of their tendency, and he be the judge of that tendency; as he must be, if he be vested with authority to punish on that account; religious liberty is entirely at an end; or, which is the same thing, is under the controul, and at the mercy of the magistrate, according as he shall think the tenets in question affect the foundation of moral obligation, or are favourable or unfavourable to religion and morality.

sality. But if the line be drawn between mere religious principle and the tendency of it, on the one hand; and thoſe overt acts which affect the public peace and order, on the other; and if the latter alone be aſſigned to the juriſdiction of the magiſtrate, as being guardian of the peace of ſociety in this world, and the former, as interfering only with a future world, be referred to a man's own conſcience, and to God, the only ſovereign Lord of conſcience; the boundaries between civil power and liberty, in religious matters, are clearly marked and determined; and the latter will not be wider or narrower, or juſt nothing at all, according to the magiſtrate's opinion of the good or bad tendency of principles.

If it be objected, that when the tendency of principles is unfavourable to the peace and good order of ſociety, as it may be, it is the magiſtrate's duty then, and for that reaſon, to reſtrain them by penal laws: I reply, that the tendency of principles, tho' it be *unfavourable*, is not *prejudicial* to ſociety, till it iſſues in ſome *overt acts* againſt the public peace and order; and when it does, *then* the magiſtrate's authority to puniſh commences; that is, he may puniſh the *overt acts*, but not the *tendency*, which is not actually hurtful; and, therefore, his penal laws ſhould be directed againſt *overt acts only*, which are detrimental to the peace and good order of ſociety, let them ſpring from what principles they will; and not againſt *principles*, or the *tendency* of principles.

The diſtinction between the tendency of principles, and the overt acts ariſing from them is, and cannot but be, obſerved in many caſes of a *civil* nature; in order to determine the bounds of the magiſtrate's power, or at leaſt to limit the exerciſe of it, in ſuch caſes. It would not be difficult to mention cuſtoms and manners, as well as principles, which have a tendency unfavourable to ſociety; and which, nevertheleſs, cannot be reſtrained by penal laws, except with the total deſtruction of civil liberty. And here, the magiſtrate muſt be contented with pointing his

penal laws againſt the evil overt acts reſulting from them. In the ſame manner he ſhould act in regard to mens profeſſing, or rejecting, religious principles or ſyſtems. Puniſhing a man for the *tendency* of his principles, is puniſhing him *before* he is guilty, for fear he *ſhould be* guilty.

Beſides, if the magiſtrate in one country hath a right to puniſh thoſe who reject the religion which is there publickly profeſſed, the magiſtrates of all other countries muſt have the ſame right; and for the ſame reaſon, namely, to guard againſt the evil tendency of renouncing a religion, the maintenance of which they think of great importance to ſociety. If thoſe perſons who reject Chriſtianity are to be puniſhed in England, thoſe who embrace it are to be puniſhed in Turkey. This is the neceſſary conſequence of allowing any penal laws to be enacted, and to operate, in ſupport or ſuppreſſion of any religious ſyſtem; for the magiſtrate muſt and will uſe his power according to his own religious perſuaſion.

If it be ſaid, that puniſhment is not to be inflicted on the mere entertaining, but only on the zealous propagating, of the principles of infidelity; it ſhould be conſidered, that the propagation of Chriſtianity would, on this maxim, be obſtructed, and even precluded, where a different religion already prevails, by making it the duty of the magiſtrate to oppoſe it, and puniſh thoſe who attempt it.

But having aſſerted, that "all affronts to Chriſtianity, "or endeavours to depreciate its efficacy, are highly de"ſerving of human puniſhment," or puniſhment from the magiſtrate, you endeavour to prove your poſition by the following obſervation: That "the belief of a future "ſtate of rewards and puniſhments, the entertaining juſt "ideas of the moral attributes of the Supreme Being, "and a firm perſuaſion that he ſuperintends, and will "finally compenſate, every action in human life, (all "which are clearly revealed in the doctrines, and forcibly "inculcated, by the precepts of our Saviour Chriſt) theſe

"are

"are the grand foundation of all judicial oaths, which "call God to witneſs the truth of thoſe facts which per- "haps may be only known to him and the party atteſt- "ing. All moral evidence, therefore, all confidence in "human veracity," you ſay, "muſt be weakened by irre- "ligion, and overthrown by infidelity *."

If by infidelity you mean diſbelief of Chriſtianity, then it will be a fair inference from this laſt aſſertion, that there can be no human faith, no mutual confidence, no bond of ſociety, and no civil government, in countries which are not Chriſtian. But the fact is otherwiſe; and the reaſon is, becauſe there are ſome principles of religion and morality prevailing even in Mohammedan and heathen countries; and thoſe right principles, though greatly ſhort of a religious ſyſtem, and blended with many erroneous, abſurd, ſuperſtitious principles; yet, have ſufficient influence in general on the minds of thoſe who embrace them, to anſwer, tolerably at leaſt, the purpoſes of civil government, and of mutual confidence and commerce.

I admit, that, provided every one who revolts from Chriſtianity to Deiſm renounced, together with his former profeſſion, all thoſe principles of natural religion on which the obligation of judicial oaths is founded, (and poſſibly you underſtand infidelity in this extenſive ſenſe, when you ſpeak of its "overthrowing all human confidence"): if, I ſay, he were known to have renounced theſe principles, your argument would be *ſo far* good, that his oath would deſerve no credit, and he would be ſubjected to innumerable inconveniencies and incapacities, which his being deſtitute of the firm confidence of other men, and being diſcredited in his judicial oaths, would naturally and ne-

* Comment. vol. iv. p. 43, 44. In the late edition it is thus altered; "weakened by apoſtacy, and overthrown by to- "tal infidelity:" an alteration which ſuperſedes the remark in the next paragraph, but leaves all that follows in its full force.

ceſſarily bring upon him: and indeed, ſuch an abſolute infidel as to all religion, natural as well as revealed, if proved to be ſo, ſhould not be admitted to take an oath in a court of judicature. But as for inflicting any *poſitive puniſhment* upon him, merely for rejecting right *principles*, or eſpouſing wrong ones, while this does not iſſue in thoſe *actions* which call for puniſhment; *that*, I think, for the reaſons already aſſigned, is beyond the province and juriſdiction of the magiſtrate.

In what I have juſt now ſaid, I have ſuppoſed theſe unbelievers of Chriſtianity to reject the great principles of natural as well as revealed religion; which, you rightly tell us, are the grand foundation of all judicial oaths. But the truth is, many who profeſs not to believe reveſation, may poſſibly believe thoſe principles as firmly as ſome nominal Chriſtians, whoſe depoſitions on oath are not ſcrupled in courts of judicature. The belief of a God, the moral governor of the world, the ſearcher of hearts, the infallible judge, rewarder and puniſher of human actions, is, as you obſerve, the only foundation of a judicial oath; and if men *do believe* theſe articles, they ſhould not be made liable to that puniſhment, which, on your own ſtate of the caſe, is due only to thoſe who *do not* believe them; they ſhould not be puniſhed, I ſay, when they *do* believe them, merely becauſe they believe them upon reaſons independent of their "being clearly reveal-"ed in the doctrines of Chriſt;" for their believing them is all that your argument requires.

Indeed, we have a ceremony in adminiſtring a judicial oath, which ſuppoſes a belief of the Chriſtian religion. But that is by no means a neceſſary, eſſential part of a ſolemn judicial appeal to heaven; and can afford, therefore, no plea for puniſhing thoſe who do not believe Chriſtianity, as incapable of a judicial oath, (ſuppoſing that a proper reaſon for puniſhment;) becauſe it is obvious, the end may be anſwered by an appeal to God in ſome

ſome other ſolemn form, without this ceremony; and our laws have ſet an example of it in the caſe of the Quakers *.

If it be enquired, whether men ſhall be ſuffered with impunity to "*affront* Chriſtianity, and depreciate its ef-"ficacy," by reproaches and calumnies, offenſive to every Chriſtian; a different caſe from ſimply diſbelieving, or modeſtly oppoſing it: I anſwer, that, provided it be unwarrantable to ſupport the belief of Chriſtianity, and to confute its oppoſers, by penal laws and the ſword of the magiſtrate; its profeſſors ſhould be exceeding tender how they animadvert, in this way, on the *manner* in which the oppoſition to it is made: a thing, comparatively of little conſequence. For, though calumny and ſlander, when affecting our fellow-men, are puniſhable by law; for this plain reaſon, becauſe an injury is done, and a damage ſuſ-

* I am obliged to my learned friend Mr. Dodſon for the following accurate remark. The caſe of the Quakers, ſaith he, doth not, I think, reach the point: for in the form of affirmation now uſed by them, there is no direct appeal to God, as there is in that preſcribed by 7 & 8 W. III. c. 34. which was altered by 8 Geo. I. c. 6. And in criminal caſes they are not admitted as witneſſes, unleſs they will be ſworn. The caſe of the Jews is much more applicable. They have been long admitted as witneſſes; and are ſworn upon the Pentateuch; which method of ſwearing them is recognized by 10 Geo. I. c. 4. ſ. 18. and 13 Geo. II. c. 7. ſ. 3. And it is very obſervable, that the teſtimony of perſons of the Gentou religion, upon oath, taken in the manner uſed in their country, was admitted in the Court of Chancery by Lord Hardwicke, in the caſe of Omichund and Barker, Feb. 23, 1744; in which caſe he was aſſiſted by Lee and Willes, Chief Juſtices, and Parker, Chief Baron, and the matter was determined upon very great deliberation. See a large account of the arguments of the Lord Chancellor and Judges, in 2 Equ. Caſ. abr. 397——412. In the third book of his invaluable Commentaries, chap. 27. Mr. Juſtice Blackſtone cites this caſe from 1 Atkins 21. and ſtates it thus: it hath been held that the depoſition of an heathen, *who believes in the Supreme Being*, taken by commiſſion in the moſt ſolemn manner according to the cuſtom of his own country, may be read in evidence. See Lord Chief Juſtice Hale's opinion as to the admiſſibility of witneſſes not being Chriſtians, in 2 Hiſt. Pl. Cor. 279. which was cited and greatly relied on in the caſe of Omichund and Barker.

tained, and a reparation therefore due to the injured party; yet, this reaſon cannot hold where God and the Redeemer are concerned; who can ſuſtain no injury from low malice and ſcurrilous invective; nor can any reparation be made to them by temporal penalties; for theſe can work no conviction or repentance in the mind of the offender; and if he continue impenitent and incorrigible, he will receive his condign puniſhment in the day of final retribution. Affronting Chriſtianity, therefore, does not come under the magiſtrate's cognizance, in this particular view, as it implies an offence againſt God and Chriſt*.

If

* It hath been obſerved, that upon the ſame principles which are laid down in this paragraph, no profane ſwearing, blaſphemy, or breach of the Sabbath, however flagrant, ought to come under the cognizance of the magiſtrate. But this objection is grounded, I apprehend, upon a miſtake; namely, that the reaſoning in this paſſage is intended as an abſolute proof, that affronting Chriſtianity is not to be puniſhed; whereas it is ſolely deſigned to ſhew, that it is not puniſhable in *this particular view*, as an offence againſt God. Whether it be puniſhable in any other, is a point afterwards conſidered. Now it is an obſervation, and a very juſt one, of biſhop Warburton (Alliance, book I. ch. 4. p. 33, 34. edit. 4.) that the magiſtrate puniſhes no bad actions, as ſins or offences againſt God, but only as crimes injurious to, or having a malignant influence on ſociety. Accordingly the crimes mentioned in the objection do not, any more than affronting Chriſtianity, come under the magiſtrate's cognizance in this particular view; from whence, however, it by no means follows, that they may not come under his cognizance in ſome others. And I really think, it can be no invaſion of any man's right of private judgment, and of the moſt unlimited privilege of propagating his ſentiments concerning religion, in the manner which he thinks moſt conducive to that end, if, from a regard to decency and the good order of ſociety, the magiſtrate do prohibit and puniſh profane ſwearing, blaſphemy, and breach of the ſabbath. For it is certain, that, by theſe practices, no one pretends to prove any ſuppoſed truths, or detect any ſuppoſed errors, or advance any ſentiments whatſoever: whereas, on the contrary, in oppoſing Chriſtianity, an infidel who thinks he is detecting an impoſture, may conceive it conducive to the ſtrength of his argument, and to the conviction

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If you ſay, that inſulting and reviling religion is very offenſive to good men, and ought, on that account, to be prohibited and puniſhed: I obſerve, ſo are all tranſgreſſions of the divine law, very offenſive to good men; but they are not, for that reaſon, all puniſhable by the magiſtrate. In the caſe of groſs lying, heinous ingratitude, and many other vices which might be mentioned, though no one thinks of applying to a court of juſtice on the occaſion, yet every good man will treat theſe vices, and thoſe who are guilty of them, with juſt abhorrence and deteſtation. And the ſame, and no other, I apprehend, ſhould be their con-

on of others, to ſet it in ſuch a light as Chriſtians will apprehend to be ſcurrilous and indecent; and in ſuch caſes it will be exceeding difficult to ſeparate the manner of oppoſition from the oppoſition itſelf, and for the magiſtrate to puniſh the former while he permits the latter. But there is no ſuch difficulty in the caſes here mentioned, common ſwearing, blaſphemy, and breach of the ſabbath. In reſpect to which I muſt however ſuggeſt this caution, that they ought to be very clearly and diſtinctly defined; and in particular, blaſphemy; ſince the idea of that, if it be extended further than to ſomething like common ſwearing, may poſſibly be extended ſo far, that laws for the puniſhment of it may be eaſily turned to the deſtruction of all religious liberty: for what is blaſphemy, in the general ſenſe of the term, but uttering ſomething diſhonourable or injurious to the Divine Being? And what controverted religious ſentiment is there, which under this general notion, by a court and jury of bigots, may not be condemned as blaſphemy?—The Athanaſian ſtiles the Arian a blaſphemer, the Arian the Athanaſian, the Calviniſt the Arminian, the Arminian the Calviniſt; and thus the ſame laws, differently applied as different parties prevail, will prove fatal to the religious liberty of all of them in their turn.——And with reſpect to breach of the ſabbath, the penal laws againſt it ſhould be rather of the negative than of the poſitive kind, and ſhould only lay reſtraints on civil liberty in caſes which may be offenſive or injurious to ſociety; for inſtance, they may extend to the prohibition of public diverſions, of the proſecution of trade and buſineſs, and the like. Upon theſe principles, and with theſe reſtrictions, the magiſtrate, I think, may make regulations in the caſes here mentioned, with a view to the good order of ſociety, without entertaining the leaſt idea of puniſhing offences againſt God, and without invading religious liberty, and the moſt unlimited rights of conſcience.

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duct, when infidels, with an offenſive indecency, vent their impotent rancour againſt the religion of Jeſus.

If you alledge, that this licentious manner of treating religion, will "depreciate its efficacy" on the minds of men, eſpecially of the undiſcerning and thoughtleſs, which are commonly the major part: I anſwer, that the contempt and abuſe which infidels throw upon religion, will, in the end, entail diſgrace and infamy on themſelves. Their ribaldry and ſcurrility will be deſpicable and diſguſtful to the more ſenſible part of our ſpecies; and while there are Chriſtians, eſpecially Chriſtian miniſters, in the world, I truſt, there will always be proper perſons, who will expoſe to the moſt ignorant and unreflecting, the groſs folly and injuſtice of ſuch abuſe; and render thoſe who are guilty of it the objects of contempt to the loweſt of the people: whereas, if puniſhed by the magiſtrate, they would be the objects, probably, of their pity: a circumſtance which would procure their inſinuations and ſuggeſtions to the prejudice of religion a much more favourable reception, than they would otherwiſe be like to obtain.

Indeed, diſcovering a diſpoſition to take refuge in temporal penalties, whenever any perſons in diſcourſe or writings miſrepreſent and revile (or, as you ſtile it, *affront*) our holy religion, and depreciate its efficacy, is acting as if we apprehended the cauſe had no other and better ſupport. Whereas, for three hundred years after its firſt promulgation, Chriſtianity maintained its full reputation and influence, (though attacked in every way which wit or malice could invent) not only without the aſſiſtance of, but in direct oppoſition to the civil power. It ſhone with the brighter luſtre, for the attempts to eclipſe it. And the inſults and calumnies of its enemies were as ineffectual to its prejudice, as either their objections, or what were more to be feared, their perſecutions. And as it was during that period, ſo will it always be, if there be any ground to rely on that promiſe of

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our bleſſed Saviour concerning his church, that "the "gates of hell ſhall not prevail againſt it *."

In the mean time, compaſſion to all ignorant, petulant, malicious adverſaries of our holy religion; and a deſire to obviate the miſchief they do, by refuting their arguments, expoſing their petulance and malice, and if poſſible, working conviction in their minds; are the diſpoſitions which ſuch contemptible attacks on the honour of the Chriſtian religion, and its author, ſhould excite in his genuine diſciples. We ſhould argue with ſuch men, not perſecute them; ſhould endeavour to reſcue others from the danger of being infected by their principles, with cool reaſoning; but we ſhould be careful how we attempt to puniſh them, leſt we *harden* inſtead of reclaiming them: leſt we leave room for others to imagine, that not their ſcoffs and inſults, but their *arguments*, have *provoked us* by being unanſwerable. And indeed, provided it be wrong to animadvert, by temporal penalties, on the calm reaſoning of infidels againſt Chriſtianity; it would, ſurely, be *imprudent* to puniſh them for what renders their arguments, if there be any, leſs formidable and prejudicial; I mean, their revilings and their ſcurrility. It is *imprudent*, I ſay, by a proſecution, to hold up to public notice, to introduce into all converſation, and excite people's curioſity after, thoſe ſcurrilous writings, which would otherwiſe quickly ſink with their authors into perpetual oblivion. Many infidels, in modern times, have united their efforts againſt the Chriſtian religion; and they have railed, at leaſt ſome of them, much more than they have reaſoned; but they have been heard, and confuted; and moſt of them are only remembered by the excellent apologies for Chriſtianity, which they have been the occaſions of producing. I hardly think they and their works would have been ſo ſoon forgotten; I am ſure, our religion would not have received ſuch honour, nor infidelity ſuch diſgrace, and ſuch a total defeat; if inſtead of being anſwered by the

* Matth. xvi. 18.

learned

learned writers, who have employed their abilities to ſo laudable a purpoſe, they had been proſecuted, fined, impriſoned, or ſuffered any other ignominious or cruel puniſhment, by the ſentence of the magiſtrate. Thoſe who call for the aid of the civil power, and for the infliction of pains and penalties, in ſupport of the Chriſtian religion, forget the character and conduct of its divine author; who when his apoſtles, out of zeal for his honour, would have invoked fire from heaven on the unbelieving Samaritans, becauſe they had juſt *affronted* him, ſeverely rebuked them: "Ye know not what manner of ſpirit ye are of; the Son of "man came not to deſtroy mens lives, but to ſave them *."

In what I have ſaid, let it not be ſuppoſed, that I have pleaded the cauſe of infidelity. No; I have pleaded that of Chriſtianity, in my own opinion at leaſt; the mild and forbearing ſpirit of which religion, I deſire more and more to imbibe, to regard all its doctrines and precepts as the rule of my faith and manners, its promiſes as the foundation of my hopes, and the ſcheme of redemption through Jeſus Chriſt as my higheſt conſolation and joy. It is indeed, from my reverence for it, and attachment to it, and zeal for its true dignity and honour, that I will ever vindicate it from the *leaſt ſuſpicion* of being a perſecuting religion †: A ſuſpicion,

* Luke ix. 55, 56.

† Several writers of the firſt rank amongſt thoſe who have appeared in defence of Chriſtianity, have declared openly, and argued ſtrongly, againſt the perſecution of infidels: particularly Dr. Lardner, in his preface to his excellent "Vindication of three miracles "of our Saviour againſt Wolſton;" and in two "Letters to the Bi-"ſhop of Chicheſter," publiſhed in the late "Memoirs of his life;" Dr. Chandler, in his preface to the "Conduct of the modern De-"iſts:" and Mr. Simon Brown, in his preface to a very ſhrewd and ſenſible pamphlet againſt Wolſton, which he ſtiles "A fit rebuke "to a ludicrous infidel." The performances of theſe writers ſhew, that they perfectly *underſtood* the ſtrength of their cauſe; and their averſion to the interpoſition of the civil power, that they altogether *relied* upon it, having no apprehenſions of the conſequences of a free debate, managed in any way the patrons of infidelity ſhould think

cion, which, if it were juſt, would be a greater brand of ignominy, and do it more real diſcredit, than all the invidious miſrepreſentations and calumnies of its adverſaries. And this it becomes thoſe ſeriouſly to conſider, who would wipe away the diſhonour done it, by methods that would double the diſgrace, not only on themſelves, but on the noble cauſe which they profeſs to eſpouſe.—I am, Sir, &c.

think proper. Indeed, no one ever made the attack in a more rude and ſcurrilous manner than Woolſton: they, however, contented themſelves with confuting his arguments and expoſing his ſcurrility, entering their proteſt, with convincing reaſons, againſt the proſecution of him. And this conduct I cannot help thinking very much to the honour of the Chriſtian religion and its advocates.

LETTER IV.

SIR,

WHEN you mention the ſtatute 1 Eliz. c. 2. which enacts, that "if any perſon whatſoever ſhall, "in plays, ſongs, or other open words, ſpeak any thing "in derogation, depraving, or deſpiſing of the common "prayer, he ſhall forfeit for the firſt offence an hundred "marks, for the ſecond offence four hundred, and for "the third offence ſhall forfeit all his goods and chattels, "and ſuffer impriſonment for life *:" I ſay, when you ſpeak of this ſtatute, you not only approve of it in the peculiar circumſtances of the time when it was firſt enacted, but you ſay, that "the continuance of it to this time can-"not be thought too ſevere or intolerant †." And the reaſon

* The expreſs words of this ſtatute called the act of Uniformity, are, That if any perſon or perſons whatſoever——ſhall in any interludes, plays, ſongs, rhymes, or by other *open words declare* or *ſpeak* any thing in the derogation, depraving or deſpiſing of the ſame book (the common prayer) or of *any thing therein contained*, or *any part thereof*——every ſuch perſon ſhall forfeit for the firſt offence an hundred marks, &c. as above.

The clauſes preceding that laſt mentioned enact, That if any parſon, vicar, or other miniſter——ſhall preach, declare, or ſpeak, any thing in the derogation or depraving of the ſaid book, or any thing therein contained, or any part thereof, he ſhall for the firſt offence forfeit the next year's profit of all his benefices, and ſuffer impriſonment for ſix months; for the ſecond offence ſhall ſuffer a year's impriſonment, and be deprived ipſo facto of all his ſpiritual promotions; and for the third offence ſhall be in like manner deprived, and impriſoned during life. If the perſon offending, have no benefice, nor any ſpiritual promotion, he ſhall for the firſt offence ſuffer one year's impriſonment, and for the ſecond offence impriſonment for life.

† Comment. vol. iv. p. 50, 51. In the new edition the author expreſſes himſelf thus: "The continuance of it to the pre-"ſent time, in terrorem at leaſt, cannot be thought too ſevere "or

reaſon you aſſign is, that "no one in preſent circumſtan-"ces can do this," that is, "revile" the liturgy (the crime to which alone you ſuppoſe the act to refer) "from "any laudable motive, not even from a miſtaken zeal for "reformation; it being, ſince the union, extremely un-"adviſable to make any alterations in the ſervice of the "church *.

Now, ſuppoſing that a man cannot have any "laudable "motive for reviling and inveighing with bitterneſs "againſt the common prayer," (for againſt this only, I ſay, you underſtand the act to be levelled); ſuppoſing it to be a thing very culpable; yet, what is the ſpecific nature of the crime, and wherein doth the malignity of it conſiſt? "It is a crime," you ſay, "of a groſſer nature "than mere nonconformity: becauſe it carries with it "the utmoſt indecency, arrogance, and ingratitude: in-"decency, by ſetting up private judgment in oppoſition "to public; arrogance, by treating with contempt and "rudeneſs what hath at leaſt a better chance to be right, "than the ſingular notions of any particular man; and "ingratitude, by denying that indulgence and liberty of "conſcience to the members of the national church "which the retainers to every petty conventicle † enjoy ‡."

This crime of reviling the liturgy, I perceive, is a very complicated one; "it carries with it," you ſay, "the ut-

"or intolerant." He alſo aſſigns ſome other reaſons for his opinion, than thoſe which are mentioned above; and they are all conſidered in a poſtſcript to this letter.

* This argument againſt alterations, taken from the union, will be conſidered particularly in a ſubſequent letter.

† Dr. Prieſtley hath remarked a want of elegance and politeneſs in this expreſſion, unworthy of a fine writer, (Remarks, p. 52, 53.): I would obſerve an impropriety in it, unbecoming the great lawyer. The word conventicle, if I underſtand it right, means an unlawful aſſembly; and is therefore improperly applied, as it is here, to the legal aſſembly of Proteſtant Diſſenters.

‡ Comment. vol. iv. p. 50.

moſt

moſt indecency, arrogance, and ingratitude." For each of which you aſſign a particular reaſon; and I ſhall examine them all in their order.

That reviling any thing, that treating with rudeneſs and contempt any man, much more a conſiderable body of men, or, the public at large, or thoſe religious forms which are uſed under the ſanction of the civil magiſtrate, and by many revered, is *indecent*, will be readily allowed. The rules of civility and good manners ought always to be obſerved; eſpecially where the public, and perſons in authority, are concerned. Never to violate them, if poſſible, is in itſelf right; and is alſo good policy; for any cauſe, inſtead of being diſſerved, will be recommended and promoted, by being defended with civility and good temper.

But I cannot help ſuſpecting, Sir, that your view reaches further than this; if this be all you mean, I do not conceive why the indecency of reviling the liturgy is, particularly, ſaid to ariſe from "ſetting up private judgment "in oppoſition to publick *:" I ſay, your putting the indecency of it on this footing, appears to me to be accounted for only by ſuppoſing, that you think it wrong to oppoſe private to public judgment, in any caſe; and then

* In the laſt edition the author ſtiles it "ſetting up private "judgment in *virulent and factious* oppoſition to publick *autho-* "*rity*." As far as reviling the liturgy implies an oppoſition which is "*virulent and factious*," I own it cannot be juſtified. But as far as it is a mere "ſetting up private judgment in op- "poſition to publick authority," it may; for whether it be ſtiled "publick authority" or "publick judgment," I think it comes to much the ſame. I ſuppoſe, the learned author would have this authority always united with, and under the influence of *judgment*: whether it be ſo or not, is another queſtion. If he is of opinion, that *mere* authority ought to be ſubmitted to in matters of religion, I beg leave to enter my diſſent from ſuch a poſition, for reaſons aſſigned in my ſecond letter, and to believe that every man is bound in ſuch caſes, to judge and act for himſelf, without regard to any human authority whatſoever.

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nonconformity and reviling the liturgy are both indecent; for the ſame reaſon, becauſe they are an oppoſition of the private to the public judgment; only one is more ſo than the other, and conſequently more indecent. And I the rather apprehend I am herein not very wide of your ſentiment, becauſe you conſider nonconformity as a crime, though not ſo great as that of reviling the liturgy; and you ſo conſider it, I imagine, on this particular account, as it is private judgment oppoſed to the public.

And indeed, if it be a general maxim, that it is *indecent* to "ſet up private judgment in oppoſition to public;" then it is certainly ſo, to diſſent from public or eſtabliſhed opinions and practices: then all thoſe who have been the authors of any reformations or improvements, in religion, in philoſophy *, in policy, and in the manners and conduct of life, contrary to the public ſtandard, have been guilty of indecency.

Beſides,

* The *public judgment* of the church of Rome hath condemned for hereſy the doctrine of the motion of the earth according to the ſyſtem of Copernicus; notwithſtanding which it hath long paſſed for orthodoxy in the *private judgment* of all philoſophers. The famous Galileo, having taught this point, and confirmed it by new diſcoveries, was impriſoned in the Inquiſition on that account, obliged to recant and curſe his former opinion, and ſwear that he would not teach it any more; but that if he ſhould know of any ſuch heretic, or any perſon ſuſpected of ſuch hereſy, he would immediately report him to the holy office. Galilæi ſyſtem. Coſmic edit. Lugd. Bat. 1699 p 488—494. Such a fatal operation had this *public judgment* formerly, in a point of *philoſophy*, capable of demonſtration, and now univerſally received. And the influence of it, though it be privately rejected by every individual, appears in the public *profeſſion* of philoſophers even in modern times. Two learned Romiſh prieſts and able mathematicians, publiſhing an edition of Sir Iſaac Newton's Principia, with an excellent Commentary, in which his principles are explained and more fully demonſtrated (the *monitum* or advertiſement to the third book of which is dated at Rome 1742), thought it neceſſary, for their ſafety I ſuppoſe, before they entered upon the heretical doctrine De ſyſtemate mundi, to make, in form, the following curious declaration; than which, however

Beſides, it is worth obſervation, that the public judgment, to which it is expected ſuch deference ſhould be paid, amounts to no more than the vote of thoſe who happen to be inveſted with power, at the time ſuch eſtabliſhments are made; which is ſometimes very different from the opinion or judgment of the publick at *that time*, and frequently differs widely from the judgment of the publick in a *ſubſequent period*. But the unhappineſs is, that, when the thing eſtabliſhed, be it what it will, hath received the ſanction of publick authority, neither numbers, nor the reſpectable characters of thoſe who diſapprove it, can eaſily procure a reform; and even when it is in a manner grown out of all credit, ſo as to be eſpouſed by very few, it ſtill paſſes under the denomination of "the publick judgment," againſt which it is "indecency "to oppoſe the private judgment of individuals *.

But

ver it was deſigned, there never ſurely was a greater burleſque upon ſervile ſubmiſſion to public judgment.

PP. Le Seur & Jacquier declaratio.

Newtonus, in hoc tertio libro, telluris motæ hypotheſim aſſumit. Autoris propoſitiones aliter explicari non poterant, niſi eâdem quoque factâ hypotheſi. Hinc alienam coacti ſumus gerere perſonam. Cæterum latis à ſummis Pontificibus contra telluris motum decretis nos obſequi profitemur.

The declaration of the fathers Le Seur and Jacquier.

Newton, in this third book, aſſumes the hypotheſis of the earth's motion. The author's propoſitions could not be explained, if we did not alſo go upon the ſame hypotheſis. Upon this account we have been obliged to appear under a feigned character. We profeſs, however, to follow the decrees iſſued by the ſovereign pontiffs againſt the motion of the earth.

* If the Athanaſian creed, with its damnatory clauſes, were now a candidate for admiſſion into the public formulary, it would doubtleſs be rejected by a very large majority, both of clergy and laity; and yet it remains one of thoſe things which are authoriſed by the *public judgment*.

It may not be amiſs to obſerve, that there is not only a reluctance to making alterations in material points, but ſometimes even to the appearance of making any in matters of common form: of which I think the following is a remarkable inſtance.

The

But ſince a man's private judgment *may happen* to be in the right, and the publick one in the wrong; whenever this

The 36th article aſſerts, that "the book of conſecration of "archbiſhops and biſhops, and ordering of prieſts and deacons, "lately ſet forth in the time of Edward the VIth." (in the ſecond year of his reign, as the article afterwards ſaith) "and con-"firmed at the ſame time by authority of parliament, doth con-"tain all things neceſſary to ſuch conſecration and ordering, "neither hath it any thing that of itſelf is ſuperſtitious and un-"godly."

The act of uniformity of Charles the II. enacts, "That all "ſubſcriptions to the articles ſhall be conſtrued and taken (for "and touching the ſix and thirtieth article) to extend unto the "book of Charles the IId. in ſuch ſort and manner as the ſame "did heretofore extend unto the book of Edward the VIth."

Now this clauſe of the act of parliament either means to ſubſtitute the book of Charles the IId. in the room of that of Edward the VIth. in which caſe, thoſe who ſubſcribe the articles, are abſurdly required by the words Edward the VIth. to underſtand Charles the IId.: or it means to add the book of Charles the IId. (though it is not mentioned in the article) to the book of Edward the VIth. and the ſubſcription muſt be underſtood virtually to extend to both, as it doth expreſsly to the book of Edward the VIth. And this, I take to be the true ſenſe of the article, from conſidering the laſt clauſe of it; namely, "Whoſoe-"ver are conſecrated and ordered according to the rites of that "book, ſince the ſecond year of the aforenamed king Edward "unto this time, or hereafter ſhall be conſecrated or ordered ac-"cording to the ſame rites, we decree all ſuch to be rightly, or-"derly, and lawfully, conſecrated and ordered." Now it can hardly be ſuppoſed, that it was the intention of the act of uniformity to ſet aſide this approbation of the orders of the church from the reformation, and to ſubſtitute in the room of it only an approbation of the ſaid orders from the time of Charles the IId. It was rather doubtleſs intended to declare an approbation of both, and that the article ſhould be hereafter extended to the book of Edward as well as the book of Charles, in like ſort and manner as it had heretofore been extended to (an odd phraſe! for it expreſly mentions) the book of Edward only. And if this be the ſenſe of the article, all who ſubſcribe it muſt be underſtood according to the act of uniformity, as well as the expreſs words of the article, to ſubſcribe to a book which very few have ſeen, and which, though the article aſſerts there is nothing in it ſuperſtitious or ungodly, contains however an oath of ſupremacy, in which is the following clauſe, "I will obſerve, kepe, mainteigne, "and defende, the whole effectes and contentes of all and ſyngu-

this is found, or generally agreed, to be the caſe, he muſt make but an aukward figure who gravely reprimands thoſe that

" lar actes and ſtatutes made and TO BE MADE within this realme " in derogacion, extirpacion, and extinguiſhment of the biſhop " of Rome and his authoritie, and all other actes and ſtatutes " made or TO BE MADE in reformacion and corroboracion of " the kynges power, of the ſupreme hed in yearth, of the " churche of Englande." &c.—" And in cace any othe BE MADE" (that is ſhall be made) " or hath been made by me, to " any perſon or perſons, in maintenaunce, defence, or favoure " of the biſhoppe of Rome, or his authoritie, juriſdicion, or " power, I repute the ſame, as vain and adnichilate, ſo helpe me " God, ALL SAINCTES AND THE HOLY EVANGELIST." See the forme and maner of makyng and conſecratyng of archiſhoppes, biſhoppes, prieſtes, and deacons, 1549, folio; with the printer's name at the end: Richardus Grafton, typographus regius excudebat menſe Martii A. M.D.XLIX. cum privilegio ad imprimendum ſolum. A copy of this edition, through the favour of my worthy friend, the Rev. Mr. Joſiah Thompſon, jun. is at preſent in my poſſeſſion; and is, by the date, of the ſame impreſſion with a copy of king Edward's ordinal mentioned by biſhop Burnet, in the preface to his third volume of the Hiſtory of the Reformation, p iv, v. as in the Lambeth library.

But what I would principally remark, is, that it ſeems very ſtrange, if the parliament by the clauſe in the act of uniformity relative to the 36th article, intended a ſubſtitution of the book of Charles the IId. inſtead of this book of Edward the VIth. that they had not altered the words of the article to that ſenſe: or, if they meant, as I rather think, to include the book of Charles in the ſubſcription, as well as the book of Edward, that they did not add a clauſe to the article, expreſsly mentioning the book of Charles the IId. This, I think, can only be accounted for by ſuppoſing, that rather than appear to make an alteration in the article, they would ſubſtitute one book for the other, or rather add one to the other, not by inſerting a clauſe for that purpoſe into the article, but by an arbitrary conſtruction, altering the ſenſe of the article, while they retained the words.

If it be ſaid, that the parliament would not alter the words of an article which had paſſed the convocation of Elizabeth, without the previous ſanction of that body; it amounts to a charge of the moſt abſurd ſcrupuloſity in the whole world, that they would venture to alter the ſenſe of convocation, but not the expreſſions. But this can hardly be the true reaſon, the authority of parliament having been always regarded ſince the reformation as ſufficient to make laws in eccleſiaſtical matters, without the convocation; whereas the convocation can make no laws at all, nor hath any authority without the parliament.

It

that ſet up the former againſt the latter. I ſhould think it, therefore, much better to come to the queſtion at once: Is the thing in deliberation right or wrong? for the opinion, neither of men in power, nor of the majority, is the teſt of truth, or the rule of our faith or practice.

So that the particular reaſon on which you ground the "indecency of reviling the liturgy," namely, that it is "ſetting up private judgment in oppoſition to publick;" appears to me to be very inadequate and unſatisfactory.

The next article in the compoſition of this crime, namely, reviling the common prayer; is, you ſay, "arrogance." It is "arrogant to treat with rudeneſs and

It is obſervable, that biſhop Hooper, who is often mentioned as refuſing to be conſecrated on account of the popiſh veſtments, objected likewiſe to taking the oath of ſupremacy abovementioned, required by the book of Edward, on account of the clauſe which concludes, So helpe me God, all ſainctes, &c. which he thought ſuperſtitious and impious; and he argued the point before the king and council ſo much to the ſatisfaction of that pious and ſenſible young prince, that he ſtruck out the words with his own hand. Burnet's Hiſt. of Reform. vol. iii. p. 202, 203, 751. Accordingly we find, that in the next edition of the ordinal, which came out by authority of parliament in the year 1552, the oath concludes thus; So helpe me God through Jeſus Chriſt. Being excuſed from ſwearing in the ſuperſtitious form to which he objected, Hooper was conſecrated, the matter relating to the veſtments being compromiſed. Fox's Acts and Monuments, vol. ii. p. 120. edit. 1684 and eſpecially the Latin edition, or the quotation from it in Peirce's vindication of the Diſſenters, p. 30.

It ſhould be obſerved, that biſhop Burnet hath committed a miſtake, in printing among his records the oath of ſupremacy made by the biſhops when they did homage to Henry the VIIIth. as the oath tendered to Hooper at his conſecration; that oath was different from the oath of ſupremacy required to be taken by biſhops at conſecration, in king Edward's ordinal; in particular, it had not the clauſe in which they ſwear to acts that *ſhall be made*, and that they hold to be void, certain oaths they *may hereafter take*; though they both conclude with nearly the ſame form of adjuration, So helpe me God, all ſainctes, and the holy evangels.

"contempt what hath a better chance to be right, than "the ſingular notions of any particular man."

In uſing the phraſe, "the ſingular notions of a particu-"lar man," you put the caſe very favourably for drawing your own concluſion. To be ſure, if a man adopts ſentiments which never entered into any body's head but his own, or which no one will embrace when propoſed, the odds are againſt him. But this is not often the caſe; and is not ſo, in particular, with regard to the debate between the church and the Diſſenters; the point here in queſtion. However, he who treats the notions of others with a rude contempt, does, I think, in moſt caſes, appear to affect a ſort of ſuperiority, (call it arrogance, or inſolence, if you pleaſe), which uſually ill becomes him who aſſumes it, and is never very agreeable to thoſe who are the objects of it.

But with relation to the query, Who have the faireſt chance of being in the right? thoſe who follow the lead of a public eſtabliſhment? or thoſe who are, or profeſs to be, impartial enquirers after truth? that, I think, is not ſo clear, at leaſt on one ſide of the queſtion, as you ſeem to imagine. Moſt eſtabliſhments, even thoſe which have been ſettled by authority of the civil power, have originated from the clergy; at leaſt, with reſpect to their formularies of doctrine and worſhip; and the magiſtrate hath had little more to do in the affair, than to eſtabliſh what hath been already prepared to his hands. Let us, then, look into eccleſiaſtical hiſtory, and ſee what the councils, ſynods, convocations, and other general, national, or provincial aſſemblies of the clergy, have, for the moſt part, been, from the firſt famous and revered council of Nice, down to the laſt ſeſſion of our own convocation in England. When I reflect on the policy and artifice uſed in the management of ſuch aſſemblies; on their obſequiouſneſs to the caprices of princes, and miniſters of ſtate, or of potent eccleſiaſtics, and even of ſome of their own ambitious and turbulent members; on their prejudices and paſſions, their private

private and party views, their ſcandalous animoſities and contentions; on the ſmall majorities by which queſtions of importance, intended to bind not only the men of that age but their poſterity, have been determined *; on the reſpectable characters which have often appeared in the minor number †; and above all, on their ſelf-con-

* The croſs in baptiſm, and kneeling at the communion, (which are impoſed in the church of England as neceſſary to the adminiſtration of theſe ordinances) as well as the obſervation of ſaints days, and a few other ceremonies, were carried in the convocation of Elizabeth 1562 by a ſingle proxy. The majority of thoſe preſent, *againſt* them, was 43 againſt 35; but upon adding the proxies, the majority, *for* them, was 59 againſt 58. Thus they obtained the honour of the *publick judgment* by this *better chance of being in the right*; and the contrary opinion was degraded into *private judgment*, though hardly ſo as to become the *ſingular notion of a particular man*. Strype's Annals, vol. i. p. 337——339 edit. 3. Burnet's Hiſtory of the Reformation, vol. iii. No. 74 among the Records, p. 662.——664. edit. 1753.

† King William, in the firſt year of his reign, granted a commiſſion to prepare alterations of the liturgy and canons, and propoſals for the reformations of the eccleſiaſtical courts. In this commiſſion, beſides ſeveral others, there were ſuch men as Tillotſon, Stillingfleet Burnet, Patrick, Tenniſon, Lloyd, Sharp, Kidder, Scot, Fowler. And they accordingly made very conſiderable alterations and improvements in the liturgy; which are highly commended by Dr. Nichols, in his *Defenſio Eccleſiæ Anglicanæ*, p. 94——97. and which Mr. Neal, in his *Hiſtory of the Puritans*, ſaith, would, if they had been adopted, have brought in three parts in four of the diſſenters; vol. ii. p. 804. edit. 4to. And this author was a good judge, ſince no one better underſtood their principles and diſpoſitions. However, the convocation, when the matter was laid before them by a meſſage from the crown, reſolved to enter into no debates about alterations, would return no anſwer to that part of the king's meſſage, and could hardly be brought to thank him for his promiſe of protection. Burnet's Hiſtory of his own times, under the year 1689. In what a contemptible light does that majority in convocation appear, who would not ſo much as *hear* what was prepared for their conſideration by *ſuch celebrated divines*, the glory of the Engliſh church, acting under a royal commiſſion! and who would not eſteem it an honour to be found in ſuch a minority! and yet their ſentiments, outvoted by furious bigots, are now only *private judgment!*

traditions, and their mutual cenſures and anathemas *; I ſay, when I conſider theſe things, I own, they ſomewhat

* A few remarks upon the four firſt general councils, will be a ſufficient illuſtration of what is here ſaid. The council of Nice, held in the year of our Lord 325, conſiſted, we are told, of more than 300 biſhops, "brought together, ſome by the "hope of gain, and others to ſee ſuch a miracle of an emperor as "Conſtantine;" who accordingly well rewarded them "by his "preſents as well as his entertainments." Euſeb. in vit. Conſt. l. 3. c. 6. & 16. Sozom. l. 1. c. 25. p. 42. Theodorit. l. 1. c. 11. p. 36. Sabinus ſaith, that "they were weak and illite-"rate men." (vid. Socrat. l. 1. c. 8. p. 21. & c. 9. p. 31;) which might be true with regard to many of them. However, it is certain, all hiſtory agreeing in it, that they were in general (πολλοι πλειονες are the words of Socrates and Sozomen) very litigious and contentious; inſomuch that the emperor was obliged to interpoſe, to take them off from their private quarrels, and from their daily cuſtom of preſenting to him accuſations againſt one another, before he could get them to attend to the buſineſs for which they were called together, (Euſeb. de vit. Conſtant. l. 3. c. 13. Socrat. l. 1. c. 8 p. 20. Sozom. l. 1. c. 17. p. 35. Theodorit. l. 1. c. 11. p. 37. Gelaſius Cyzic. l. 2. c. 8.); and when they did not engage in it, their conduct was agreeable to their character; for the party accuſed having laid before them a written confeſſion of their faith, they immediately tore it in pieces; and a great tumult ariſing, and thoſe who preſented the paper, being cried out upon as betrayers of the faith, were ſo terrified, that they all aroſe, except two, and were the firſt in condemning the ſentiments and party they before eſpouſed, Theodorit. l. 1. c. 7. p. 27. With ſuch violence were matters carried in the council! And the unintelligible terms which they introduced into their creeds and definitions of faith, and impoſed by dint of authority upon others, only ſerved to increaſe and perpetuate the controverſies then ſubſiſting, and fill the world with mutual rage, and mutual perſecutions. "The "conſequence of which was, that the Chriſtian religion, which, "for 300 years after the aſcenſion of Jeſus, had been ſpreading "over a large part of Aſia, Europe, and Africa, without the aſ-"ſiſtance of ſecular power and church-authority, and at the "convening of the council of Nice, was almoſt every where "through thoſe countries in a flouriſhing condition, in the ſpace "of another 300 years, or a little more, was greatly corrupted "in a large part of that extent, its glory debaſed, and its light "almoſt extinguiſhed." Dr Lardner's Credibil. vol. viii. p 24. This council, we are informed by Socrates, l. 1. c. 11. p. 38, 39. by Sozomen, l. 1. c. 23. p. 41. and by Nicephorus Calliſtus,

what abate my reverence for the determinations of ſuch bodies, and for the eſtabliſhments founded by them, or by

tus, l. 8. c. 19. tom. 1. p. 571. was on the point of decreeing the celibacy of the clergy, if they had not been diverted from it by a ſpirited oration of Paphnutius, an Egyptian biſhop; and perhaps by perceiving, that it was diſagreeable to the emperor; as it probably was, if we may judge by the marks of ſingular reſpect which he ſhewed that biſhop. Secrat. l. 1. c. 11. p. 38.

The next general council of Conſtantinople, in the year of our Lord 381, was called to confirm the deciſions of the council of Nice, which had not in the leaſt extinguiſhed the rage of controverſy. Previous to it, the emperor wrote to the inhabitants of that city, that he "would have all his ſubjects be of the ſame "religion, which Peter, prince of the apoſtles, had from the be-"ginning delivered to the Romans, and which was now held by "Damaſus, biſhop of Rome, and Peter, biſhop of Alexandria." Sozom. l. 7. c. 4. Juſtiniani Cod. l. 1. tit. 1. §. 1. So reſpectable a father as Gregory Nazianzen, in a letter which he wrote to Procopius to excuſe himſelf with the emperor for attending this council, ſaith, that he was "deſirous of avoiding all ſynods, be-"cauſe he had never ſeen a good effect, or happy concluſion of "any one of them; that they rather increaſed than leſſened the "evils they were deſigned to prevent. For the love of conten-"tion, and luſt of power, were there manifeſted in inſtances innu-"merable." Operum, tom. 1. p. 814. epiſt. 55. edit. Paris 1630. And what the good father ſaid concerning former councils, not excepting the famous one of Nice, he found afterwards to be true of this council of Conſtantinople. "Theſe conveyers of the "Holy Ghoſt," ſaith he, "theſe preachers of peace to all men, "grew ſo bitterly outrageous and clamorous againſt one another, "in the midſt of the church, bandying into parties, mutually ac-"cuſing each other, leaping about as if they had been mad, un-"der the furious impulſe of a luſt of power and dominion, as if "they would have rent the whole world in pieces." He ſaith "afterwards, that this was not the effect of piety, but of a conten-"tion for thrones:" ουκ ευσεβειας—τον υπερ θρονων αγων. And he gives a ſtrange account of their indecent behaviour, when he had juſt made a ſpeech to them. "Theſe furious young men were fol-"lowed by the elder," ſaith he, "and ruled the council." Greg. Naz. de vit. ſua, operum tom. 2. p. 25, 27.

The General council of Epheſus, A. D. 431. was called on this occaſion. Neſtorius was of opinion, that the two natures in Chriſt were not ſo united after the incarnation, as to occaſion a mutual communication of properties. He therefore objected to calling the Virgin Mary, Θεοτοκος, the mother of God; and would have her called, Χριστοκος, the mother of Chriſt. Socrat l. 7. c. 32.

Council.

by the civil power in consequence of their resolves; and I am apt to surmise, that a candid enquirer after truth would

Concil. tom. 1. p. 1280. edit. Harduin. The design of the council of Ephesus was, to settle this notable dispute; or rather to condemn Nestorius. When they met, Cyril of Alexandria, the avowed enemy of Nestorius, induced the bishops present, of his own party, to proceed with great precipitance and violence to the condemnation of Nestorius, before the arrival of John bishop of Antioch, and the bishops who were with him; and that, in opposition to the protest of 60 or 70 bishops, and of the emperor's commissioner, whom they drove out of the assembly. Concil. tom 1. p. 1351——1354. And then they sent an account of what they had done, inscribed, "To Nestorius, a second Judas." Concil. tom. 1. p. 1434. When John and his party arrived, they deposed Cyril; Concil. tom. 1. p. 1450——1455. and Cyril and his party, in return, deposed John; Concil. tom. 1. p. 1500. Evagr. l. 1. c. 5. p. 254, 255. And thus there subsisted two councils, mutually condemning each other. To allay the storm, the emperor gave his sanction to the deposition of Nestorius, Cyril, and Memnon, an active partizan of Cyril's, (Concil. tom. 1. p. 1550. E. 1551. A, E. 1555. A.) and they were arrested by the Emperor's commissioner, p. 1555---1557. But he was afterwards brought (some say, by the money distributed amongst his courtiers by the deputies of Cyril, p. 1580. C.) to alter his mind; to confirm, indeed, the deposition of Nestorius, whom he banished, (p. 1670. A, B.); but to restore Cyril and Memnon. Ever since Cyril, and his party have been esteemed the legitimate council of Ephesus. Isidorus of Pelusium, in a letter to Cyril, treats him very justly as well as very freely, when he represents his conduct in this council to be that of a man pursuing only his own resentments, Epistol. l. 1. epist. 310. operum edit. Paris 1638.

The fourth general council of Chalcedon, A. D. 451. was occasioned by the extraordinary transactions of a council of Ephesus in the year 449, of which Dioscorus, bishop of Alexandria, was president; and in which the doctrine of the two natures in Christ after the incarnation was condemned, and the contrary doctrine of Eutyches affirmed. The menaces of the president, together with the soldiers and monks, who surrounded the council, terrified the whole assembly. Concil. tom. 2. p. 213. C, D. and Flavianus, bishop of Constantinople, who had condemned Eutyches, being accused by the president, and declared to be anathematized and deposed; and appealing therefore from him, and some bishops at the same time interposing in his behalf; the president started up, and sternly called for the emperor's commissioners, by whose command the proconsul of Asia came in with the military, and a confused mob with chains and clubs and swords. Concil. tom. 2. p. 216. and some bishops not willing to declare, and others flying away, he cried out, "If any one refu-

ses

would eſteem it a much fairer chance for being in the right, to follow his own judgment; or, if any other, the judgment

ſes to ſign, with me he hath to contend;" (tom. 2. p. 213. B.) and then he and another biſhop carried about a blank paper, (Concil. tom. 2. p. 80. E. p. 94. D, E p. 101. E. Evagr. l. 2. c. 4. p. 288.) and obliged them all to ſign it. After which it was filled up with the charge of hereſy againſt Flavianus, and the ſentence of his depoſition. Flavianus ſtill excepting againſt the preſident, he and others fell furiouſly upon him, beating him barbarouſly, throwing him down, kicking and trampling upon him, inſomuch that three days after he died of the bruiſes he had received in the council. Liberat. Breviar. c. 12. Niceph. Calliſt. l. 14. c. 47. tom. 2. p. 550. edit. Paris 1630.

The general council of Chalcedon, I ſay, was called upon occaſion of the tranſactions and deciſions of this council of Epheſus; and after ſome ſtruggle between the two contending parties, for and againſt Dioſcorus; ſome crying out for the condemnation and baniſhment of the heretic, for Chriſt had depoſed him; and others, for his reſtorations to the council, to the churches; (Concil. tom. 2. p. 310. B.) the party againſt him prevailed, and he was depoſed, (tom. 2. p. 377.) and the doctrine of the two natures, which had been condemned before, was now affirmed; the fathers crying out, "We believe as Pope Leo doth, anathe-"ma to the dividers and confounders, we believe as Cyril did; "thus the orthodox believe, curſed be every one who doth not "believe ſo too." Concil. tom. 2. p. 305. E.

On this brief ſurvey of theſe four general councils, will the reader believe, that they are by law joined with the ſcriptures, as judges of hereſy, and as guides of that "*public judgment* which "hath a better chance to be right than the ſingular notions, or "private judgment of any particular man?" Yet ſo it is. See 1 Eliz c. 1. ſect. 36.

It may, perhaps, by ſome perſons, be eſteemed an act of prudence to conceal the enormities of ſuch famous aſſemblies of Chriſtian biſhops, leſt the honour of Chriſtianity ſhould ſuffer by expoſing them. But, I confeſs, I cannot be of this opinion. Chriſtianity can never ſuffer, in the judgment of any impartial perſon, by the conduct of thoſe turbulent and factious men, who have figured on the public theatre in ſupport of *political* religion; while it hath numberleſs advocates in every age, who, by their example as well as influence, promote the intereſt of *perſonal religion*; exhibiting the faireſt patterns of meekneſs, humility, contempt of the world, patience, contentment, purity, and ſpirituality, univerſal benevolence and charity, as well as the moſt undiſſembled and fervent piety. Such men of ſterling worth, ſuch genuine Chriſtians, who paſs through the world, like a gentle current,

judgment of a few ſerious, impartial, diſintereſted enquirers, like himſelf, than to adopt the reſolutions of the moſt venerable ſynod, in which truth and right are decided by the major vote. I would not be thought to be an advocate for an arrogant, inſolent, pragmatical contempt of the opinions of others: what I mean is, that were I to be under direction in the purſuit of truth, I had rather follow (next to the divine bleſſing on my own ſincere enquiries) the judgment and guidance of ſome wiſe and good men, that I have known, than the public deciſions of any or all the councils ſince the days of the apoſtles.

The third article which you exhibit againſt reviling the liturgy, is, that it involves in it "ingratitude, by de-"nying indulgence and liberty of conſcience to the mem-"bers of the national church." There would be little room, ſurely, Sir, to complain of violations of liberty of conſcience; if, in contending for their reſpective dogmas, men never went beyond contemning and ridiculing one another: for, however cenſurable this may be, it certainly is not denying them liberty of conſcience: that always implies reſtraint or compulſion, ideas very different from contempt and ridicule *.

But

current, which fertilizes the whole adjacent country, appear with no eclat in hiſtory; the good effects of their virtues being diffuſed in ſilence; while the reſtleſs and ambitious, who aim at wealth and power and pre-eminence, and bear down all before them, like reſiſtleſs torrents, which deſolate whole regions, attract obſervation for the changes they produce in the world, and the materials they furniſh for the pen of the civil or eccleſiaſtical hiſtorians. Nevertheleſs, thoſe good and righteous men, who have ſerved their generation, in their particular ſtations, by their private virtues, will be hereafter had in everlaſting remembrance; when thoſe who have ſtood forth to the public as the champions of tyranny or ſecular Chriſtianity, will be covered with ſhame and everlaſting contempt.

* The author in his late edition, vol. iv. p. 50. declares reviling the liturgy to be "ingratitude, by denying that indul-"gence and *undiſturbed* liberty of conſcience to the members of "the

But perhaps, reviling the liturgy may be cenſured, as ungrateful, on account of the toleration indulged to Diſſenters. It is not, however, to the church the Diſſenters are peculiarly indebted for this bleſſing *. For though her governors promiſed them every mark of Chriſtian temper and brotherly affection, when her fears of popery ran high in the reign of James the Second; yet, as ſoon as the ſtorm ſubſided, theſe promiſes were, in great meaſure, forgotten. It is to that great prince, King William, to whom the Britiſh conſtitution and liberties owe their preſervation and ſecurity; and to thoſe renowned patriots who firſt engaged, and then ſupported him, in the glorious en-

" the national church, which the retainers to every petty con-
" venticle enjoy." So that reviling is not denying abſolutely liberty of conſcience, but only *undiſturbed* liberty of conſcience. But do *the retainers to every petty conventicle* enjoy this liberty *undiſturbed* in his *own ſenſe* of the word? I appeal to the learned gentleman himſelf, whether this aſſertion would have appeared with leſs grace, if that ſcornful expreſſion concerning Diſſenters, " retainers to every petty conventicle," had been ſuppreſſed; ſince it not only *diſturbs*, according to his own idea of the word, but by implication, *denies* their liberty of conſcience; conventicles being, as I ſaid before, *unlawful* aſſemblies.

* The author of the Alliance between the Church and State, in his Poſtſcript and anſwer to Lord Bolingbroke, p. 2, 3. ſpeaking both of the teſt-act and of the toleration, obſerves, that " this reform of the Engliſh conſtitution happened not to be the " good work of the church, begun in the conviction of truth, " and carried on upon the principles of charity; but was rather " owing to the vigilance of the ſtate, at one time, vainly per- " haps, anxious for the eſtabliſhed religion, (Char. II.) at ano- " ther, wiſely provident for the ſupport of civil liberty." (Will. III.) The Author is certainly right with reſpect to the toleration: it was entirely the work of the ſtate. King William engaged in it heartily; partly, no doubt, to ſtrengthen the intereſt of civil liberty, of which the Diſſenters were a to man zealous friends; and partly, from a regard to religious liberty, of which he had all his life ſhewn himſelf a firm and ſteady patron. The teſt was not the work of Charles the IId. it was puſhed on in oppoſition to the court by the patriots of thoſe times, in order to ſecure the civil as well as the eccleſiaſtical conſtitution from the machinations of the Papiſts, by excluding them from public offices; and the royal aſſent to it was procured by the Commons ſtopping the bill of ſupply till it was paſſed.

terprize;

terprize; it is to theſe, and ſuch as theſe, the Diſſenters are, under God, alone obliged for their deliverance from unjuſt violence and oppreſſion; and for being reſtored, in part, to their natural rights by the toleration. I ſay, to their natural rights: for religious liberty is one of thoſe rights to which men are entitled by nature; as much ſo, as to their lives and properties: and it ſhould be remembered, therefore, that the Diſſenters cannot be juſtly reckoned to be any more obliged to thoſe who *kindly* do not again deprive them of it; than they are to thoſe who *as kindly*, do not ſeize on their eſtates, or take away their lives: an obligation, which, I ſuppoſe, hath never been eſteemed a reaſon for any *peculiar gratitude*.

And now, Sir, notwithſtanding the exceptions which I have taken to your premiſes, I will leave you in full poſſeſſion of your concluſion: I will ſuppoſe, that the crime of reviling the liturgy is a complication of "indecency, "arrogance, and ingratitude:" and I will add, moreover, that it may poſſibly imply, (and, I think, it is the principal thing that can be implied in it, though you have not at all mentioned it,) great malignity and inveteracy againſt the church. But, ſurely, to confiſcate a man's goods, and impriſon him for life, for any degree of any of theſe evil diſpoſitions towards the church, when diſcovered only by words, (though it be frequently, and they be ever ſo open and explicit,) and not by any injurious and dangerous overt-acts; muſt be conſidered, one would think, by perſons of humanity, and doubtleſs therefore by you, Sir, upon further reflection, to be ſomewhat *too ſevere and intolerant*. Notwithſtanding all the bitterneſs with which the puritans inveighed againſt the offices of the church, (and which they did not do, till by oppreſſion they were provoked almoſt to madneſs,) the paſſing this act, in my opinion, diſcovered a very intolerant ſpirit in thoſe who, at that time, had the conduct of public affairs.

But perhaps it may be ſaid, that this meaſure was adopted only out of prudence, for the ſecurity of the national eſtabliſhment.

eſtabliſhment. You inform us, that "the terror of theſe "laws (for, you ſay, they ſeldom or never were fully exe-"cuted) proved a principal means, under Providence, of "preſerving the purity as well as decency of our national "worſhip *." Which, give me leave to ſay, Sir, is paſſing no great compliment upon the national worſhip.

But however that be: what had the church to fear from the revilings of the puritans, that ſhe muſt fence herſelf around with human terrors? We are to ſuppoſe, ſhe had all the truth and argument, as well as the encouragement of the civil magiſtrate, on her ſide. In this caſe, having recourſe to human terrors was bringing diſgrace on a good cauſe, and doing credit to a bad one. For the preſumption, in moſt mens minds, is always in favour of the cauſe which is oppreſſed and perſecuted; and that this is the caſe, is owing, partly to a certain generoſity in mankind, which inclines them to ſide with the weakeſt, and thoſe who are ill treated; and partly to a perſuaſion, which appears not wholly unreaſonable, that while argument can be maintained, terror will not be employed. And for my own part, I am perſuaded, that the church, inſtead of inſuring its ſafety by theſe methods, greatly increaſed the number of its enemies, and inflamed their animoſity and inveteracy. Had the governors of the church or ſtate, at that time, made a few conceſſions, ſuch as not only the puritans, but many wiſe and great men in the church, deſired; or, in caſe they had not thought proper to do this, if they had indulged and tolerated thoſe puritans, who could not in conſcience conform; it is my opinion, the church would have been in no more danger from the puritans of that age, than it is now in from the Diſſenters of this. Such ſevere laws occaſioned the very crime they were intended to prevent: for they imbittered mens ſpirits, and inflamed their paſſions: and when the mind is greatly irritated, it is hardly in human nature to ſpeak with temper and moderation, either of thoſe by

* Comment. vol. iv. p. 51.

whom,

whom, or of that for which, men feel themſelves ill-treated and oppreſſed.

I would further obſerve, (and it is an obſervation I would ſubmit to the conſideration of a gentleman of your profeſſion, in particular) that, on ſuppoſition this act was levelled only, as you ſeem to imagine, againſt the bitter reproaches and inſults of the puritans, it ſeems to have been drawn with too great a latitude of expreſſion. I believe you will admit, and, I think, you have ſomewhere ſaid ſomething like it, that it is the excellence of any law to define offences and puniſhments with the utmoſt preciſion, that the ſubject may know diſtinctly what is lawful and what is forbidden. But is this the caſe with the act before us, ſuppoſing it to be deſigned merely againſt reviling and outraging the offices of the church? For, what is the preciſe idea of one who declares or ſpeaks any thing, in open words, in derogation of the common prayer? Surely under an expreſſion of ſuch latitude may be included every man, who openly declares his diſapprobation of it, or as the act expreſsly ſaith, of any thing therein contained, or any part thereof; that is, every one who gives any of his reaſons for not joining in the offices of the church; and he may, by a willing judge and jury, nay, ought, according to the literal ſenſe of the words, to be convicted upon this ſtatute. Now, ſuppoſing this law was intended only, as you ſeem to think, againſt inſulting and reviling the liturgy; can ſo good a lawyer as Dr. Blackſtone approve of a ſtatute, which is ſo worded as to comprehend perſons who are entirely innocent of the crime intended *?

But

* Having met with one or two perſons who conceive what is here ſaid not eaſily reconcileable with what I before advanced in p. 39, 40. I beg leave to obſerve, that in p. 39, 40. I ſpeak of it as a *felicity*, that our laws againſt hereſy have not preciſely defined it, becauſe in *theſe times of lenity and moderation*, it is not very likely that a jury will take upon them to define it, where the law hath left it *doubtful and undefined*, and them at *liberty*

to

But in truth, I cannot help thinking, that it was the actual intention of thoſe who promoted this act, to put an effectual ſtop, if poſſible, to the puritans *arguments* as well as their revilings; and that, on this account, the act was ſo expreſſed, as to include every man who finds fault with the common prayer, though only in a way of argument. For certainly, that is, "in open words ſpeaking in derogation of it." The intent of the act at that time, I am afraid, was, to prevent the queſtioning any part of the ſervice of the church, either in a way of reaſoning or reviling.

Before Dr. Blackſtone, therefore, had declared his approbation of this ſtatute, and much more of the continuance of it to the preſent time, he ſhould have conſidered, what perſons and what caſes, according to its literal and juſt conſtruction, and perhaps according to its original intention, may be affected by it; and whether he would chuſe to vindicate it in its full extent. In every view it appears to me very ſurpriſing, that you, Sir, who have expreſſed yourſelf, on various occaſions, with ſo much liberality of ſentiment, ſhould think "the continuance of "this act not too ſevere and intolerant."

After ſuch a declaration, I cannot be much ſurpriſed at your paſſing this encomium on the reign of Elizabeth,

to put a favourable conſtruction. But the ſentiment I here ſuggeſt is, that if the judgment of the learned Commentator concerning the crime againſt which 1 Eliz. c. 2. §. 14 is levelled, be right, then there is a want of preciſion of *another* kind, not ariſing from the *uncertainty* of the expreſſion, but from the *latitude* of it, which *comprehends*, and thereby *binds down* the jury (without leaving any room for the interpoſition of their lenity) to convict, perſons who, in his opinion, are innocent; and therefore he ought to have condemned this law for the *impropriety* as well as ſeverity of it; whereas in the former caſe, the impropriety might have been *excuſed* for the ſake of the good conſequence ariſing from it through the lenity of the times. What I have ſaid in theſe two paſſages being thus brought into one point of view, I apprehend there will not appear to be the leaſt inconſiſtency between them.

notwithſtanding it produced ſuch ſevere laws againſt non-conformity, that "the reformation was then finally eſta-"bliſhed with temper and decency, unſullied with party-"rancour, or perſonal caprice and reſentment *." An impartial review of the eccleſiaſtical hiſtory of thoſe times, as it is exhibited by Fuller, Strype, and other credible hiſtorians of the church of England; is, I think, ſufficient to convince us, that there was, in that reign, a great deal of ill-temper, party-rancour, and perſonal pique and reſentment in the governors of the church, which entered much more than it ſhould have done into their deliberations and conduct concerning eccleſiaſtical affairs. The queen, it is true, at the entrance of her reign, diſcovered great policy and caution, in the meaſures ſhe employed to take down the fabrick of Popery, which her ſiſter Queen Mary had re-edified. Nevertheleſs, through the whole courſe of it, there were few demonſtrations of temper and moderation in her, or in thoſe governors of the church whom ſhe principally eſteemed and preferred; whereas there were many proofs and examples of unjuſt and cruel ſeverity, towards thoſe Proteſtants who diſliked the leaſt article in her eccleſiaſtical ſettlement, or who expreſſed, though in ever ſo humble and modeſt a manner, their deſire of a further reformation. The truth is, ſhe had entertained ſuch lofty conceptions of her ſpiritual as well as temporal prerogative, and was diſpoſed to maintain it, upon all occaſions, with ſuch rigour; as cannot be eaſily reconciled with any juſt notions of religious liberty, or with any regard to the ſacred and inviolable rights of conſcience.—I am Sir, &c.

* Comment. vol. iv. p. 48.

POST-

POSTSCRIPT TO LETTER IV.

SIR,

I Shall not be thought deficient, I hope, in that amiable virtue, candor, of which you have ſet a laudable example; if I obſerve, that ſome of the alterations in the late edition of your Commentaries, are not perfectly ſatisfactory. In particular, the account in this edition, as well as that in the former, of the clauſe in the act of uniformity, 1 Eliz. c. 2. §. 9. againſt declaring or ſpeaking any thing in open words, in derogation or depraving of the liturgy, appears to me to be liable to ſeveral objections, "The continu-"ance of this clauſe," you ſay, "to this time, in terro-"rem at leaſt" (thus you now chuſe to expreſs yourſelf) "cannot be thought too ſevere or intolerant; when we "conſider, that it is levelled at the offence, not of think-"ing differently from the national church, but of railing "at that church and its ordinances, for not ſubmitting its "public judgment to the private opinion of others. For "though it is clear," you add, "that no reſtraint ſhould "be laid upon rational and diſpaſſionate enquiries into the "rectitude and propriety of the eſtabliſhed mode of wor-"ſhip, yet contumely and contempt are what no eſta-"bliſhment can tolerate." And then you remark, that "a rigid attachment to trifles, and an intemperate "zeal for reforming them, are equally ridiculous and ab-"ſurd. But the latter is at preſent the leſs excuſable, be-"cauſe from political reaſons ſufficiently hinted at in a for-"mer volume, it would now be extremely unadviſable to "make any alterations in the ſervice of the church." And in ſupport of this obſervation, that "contumely and con-

"tempt are what no eſtabliſhment can tolerate," you inſert this marginal note: "By an ordinance *, 23 Aug. "1645, which continued till the reſtoration, to preach, "write, or print any thing in derogation or depraving of "the directory for the then eſtabliſhed preſbyterian wor-"ſhip, ſubjected the offender, upon indictment, to a diſ-"cretionary fine, not exceeding fifty pounds. (Scobel, "98.)"

The firſt remark, which I think proper to make, relates to the approbation here given to acts in terrorem: to acts which are attended (like that in particular now under conſideration) with penalties too ſevere to be executed, conſiſtently with any principles of humanity, or even equity; which requires a due proportion between the puniſhment and the crime. And ſuch laws cannot, I think, be conſidered as the offspring of political wiſdom, ſo much as of an arbitrary and tyrannical diſpoſition: for the laws of a wiſe ſtate ſhould only be ſuch, if I am not miſtaken, as may be carried into effect, with reaſon and juſtice. The common law of England, in particular, is the voice of reaſon; and its ſtatutes ſhould always ſpeak the ſame language.

It is not ſufficient to allege, that theſe laws are made only in terrorem: an allegation, I ſay, which can never vindicate them; for this obvious reaſon, becauſe they never contain in them a declaration, that they are made only in terrorem; indeed if they did, they would abſolutely de-

* The words of the ordinance are, That what perſon ſoever ſhall with intent to bring the ſaid directory into contempt and neglect, or to raiſe oppoſition againſt it, preach, write, print, or cauſe to be written or printed, any thing in the derogation or depraving of the ſaid book, or any thing therein contained, or any part thereof, ſhall loſe and forfeit for every ſuch offence, ſuch a ſum of money as ſhall at the time of his conviction be thought fit to be impoſed upon him by thoſe before whom he ſhall have his tryal, provided that it be not leſs than five pounds, nor exceeding the ſum of fifty pounds.

feat

feat their own intention. That ſuch laws are not executed therefore, and that acts of ſeverity and cruelty are not in conſequence of them, and under their ſanction, committed, is not at all owing to the laws themſelves, but ſolely to the ſpirit of the times. And the laws themſelves are neither better nor worſe, becauſe they do not happen to be executed. To form therefore a right judgment concerning them, we ſhould examine them as to what they are in their own nature, and on ſuppoſition they will be executed; and approve or condemn them, as they appear in this view, to be either reaſonable or otherwiſe. Suppoſe a proſecution is commenced, that the law hath its courſe, and that the penalty is inflicted, the proper queſtion is, What ſhall we think of the law in theſe circumſtances? And in the caſe before us, where the penalty is one hundred marks for the firſt offence, four hundred for the ſecond, and forfeiture of goods and chattels and impriſonment for life for the third offence, of ſpeaking in open words in derogation of the common prayer; I believe, on ſuppoſition of the actual infliction of this penalty, eſpecially in the laſt inſtance, I may ſafely appeal to the moſt zealous partizan of the eſtabliſhed liturgy, whether there is any proportion between the puniſhment and the crime.

Beſides, the ſubject ſhould always be able to learn his condition under any law, from the law itſelf; and not be obliged to recur, for this purpoſe, to conſiderations wholly foreign to it; ſuch as the ſpirit of the times, and the chance that it will not be executed. This is not being under the government of law, under a known and equitable rule; it is being at mercy; it is being ſubject to fortuitous events, of which no eſtimate can be taken. Now every law is unreaſonable, which leaves the ſubject in a condition ſo inſecure: Every law deſerves to be condemned, which brings the infliction of an unreaſonable and diſproportionate puniſhment, within the power of every one who takes upon him to be an informer or proſecutor; and which affords, therefore, no ſecurity from injuſtice and oppreſſion (for every penalty more ſevere than the offence deſerves, is, in

proportion, unjuſt and oppreſſive); I ſay, every ſuch law ſhould be exploded, as leaves no ground of exemption from injuſtice and oppreſſion, but the bare preſumption that there will be no proſecutor, and conſequently that the law will not be executed: which really amounts to this very bad compliment upon the law, that the people will diſcern the iniquity of it, and have more wiſdom and moderation than thoſe who enacted it. However, it muſt be confeſſed, this is not always to be expected; and therefore (to uſe your own fervent expreſſions concerning the laws in terrorem againſt the PAPISTS) "it ought not to be left "in the breaſt of every mercileſs bigot to drag down the "vengeance of thoſe occaſional laws upon inoffenſive, "though miſtaken, ſubjects; in oppoſition to the lenient "inclinations of the civil magiſtrate, and to the deſtructi-"on of every principle of toleration and religious liber-"ty*."

If

* Comment. vol. iv. book 4. chap. 4. page 57. Penal laws are never warrantable againſt any mere ſyſtem of religion; and yet they may be juſtified againſt the ſyſtem of the church of Rome, becauſe it is not merely a corrupt and erroneous ſyſtem of religion, but a wicked conſpiracy for the extirpation of all who oppoſe her enormous ſuperſtitions and uſurpations: and hath uniformly appeared to be ſo, wherever her power hath been predominant. Upon this conviction, very ſevere ſtatutes have been enacted againſt the Papiſts, in theſe kingdoms, at thoſe particular periods ſince the reformation, when peculiar danger was apprehended from their machinations. Theſe laws are nevertheleſs every day violated with impunity. And the reaſon is, that they have ſeldom or never been executed; becauſe they are of ſo ſevere and ſanguinary a nature, that the idea of executing them, ſhocks the humane and liberal ſentiments of the age. It is, notwithſtanding, always requiſite to be on our guard againſt the prevalence of Popery, that implacable enemy to the general liberties of mankind, as well as in particular to our own happy conſtitution. But the danger, I apprehend, would be more effectually prevented by laws which might be properly executed, than by laws which the genius and ſpirit of the times have rendered as dormant as if they were obſolete. The ſyſtem of laws eſtabliſhed in Holland would perhaps deſerve conſideration. That wiſe people, I am informed, permit no Jeſuits at all in their country, and no prieſts but natives; no money to be carried out of

If any one plead the danger ariſing from impunity, as an excuſe for the ſeverity of that law in particular, which we have now in contemplation; I profeſs, I cannot perceive, as I obſerved in my fourth letter, any ſuch mighty danger ariſing from mere words ſpoken in derogation of the common prayer, ſeparate from any violent and outrageous overt acts, as will be a tolerable excuſe for penalties ſo enormouſly ſevere *.

You

of their dominions upon a religious account, no attempts to make proſelytes, and the like. And in caſe of a breach of any one of theſe regulations, the place of worſhip belonging to the Roman Catholics, (for under the preceding reſtrictions they are tolerated in Holland) in the diſtrict where the offence is committed, is immediately ſhut up. This makes it to be the intereſt of their religion, for every individual to obſerve the laws of his country; and the conſequence is, that there is hardly ever a convert attempted to be made to Popery; and the Catholics, the deſcendants of popiſh anceſtors, or thoſe who come to ſettle in the provinces, are preſerved, or weaned, from any attachment to a foreign intereſt; and at the ſame time, having no ſhare in the magiſtracy, and their numbers and perſons being well known, the danger which might be apprehended from their principles, is in great meaſure precluded: perhaps in a greater degree, than where the laws are ſo ſevere, that, except in caſe of overt acts of treaſon or rebellion, they can never be executed.

I have made theſe obſervations, becauſe I apprehend, laws in terrorem will in any caſe anſwer very little purpoſe. I am however perſuaded, that to guard againſt the prevalence of Popery, by every method which appears to be calculated for that end; in Proteſtants, whom Papiſts ſtile heretics, and as ſuch eſteem fit for nothing but extirpation in this world, and damnation in the next, is mere ſelf-defence. And, thanks to the Catholics, whilſt they have among them ſuch writers as the author of the life of Cardinal Pole, who in this proteſtant kingdom has the audacity to write a cool apology for the flames which were kindled in Smithfield by Queen Mary, they will not let us overlook the neceſſity of taking every meaſure requiſite for our ſecurity, againſt their pernicious and perſecuting principles and practices.

* It is very extraordinary, that this act inflicts the ſame penalty upon open words ſpoken in derogation of the common prayer, as upon the overt act of obſtructing the reading of it. It enacts, "That if any perſon whatſoever ſhall in any open words "declare or ſpeak any thing in the derogation of the common "prayer; or by open fact, deed, or by open threatnings, ſhall

You endeavour, however, to ſupport your opinion, that "the continuance of this act to the preſent time, in "terrorem at leaſt, is not too ſevere and intolerant," by ſuggeſting, that "it is levelled at the offence, not of "thinking differently from the national church, but of "railing at that church and its ordinances for not ſubmit-"ting its publick judgment to the private opinion of "others." I readily admit, that the act is not levelled againſt thinking differently from the national church; it would be a groſs abſurdity, if it were; inaſmuch as mere thought can never come under the cognizance of any human law whatſoever. But there is ſurely a medium, in all caſes, between thinking and railing; I mean aſſerting and arguing: and therefore ſuppoſing (but not granting) this act to be intended merely againſt railing, I think, with ſubmiſſion, you ſhould have attempted, at leaſt, to define the crime more accurately than you have done; that under the notion of railing, a man's merely declaring his ſentiments, and arguing in ſupport of them, may not be conſtrued to be within the intent of this act. Any one who conſiders the uſual courſe of religious controverſy, may obſerve, that what preſſes cloſe upon an adverſary, what cannot be eaſily anſwered, is very apt to be exclaimed againſt as miſrepreſentation and abuſe; and the diſputant, who only reaſons, if he ſets his argument in a light calculated to convince or confound his adverſary, is preſently charged with railing. Nothing is beſtowed more indiſcriminately, than ſuch language; for bigots of all parties, who ſee no difficulty on their own ſide, take it for granted, when they cannot get rid of an untoward con-

"unlawfully interrupt or let any parſon, vicar, &c. to ſing or "ſay common and open prayer, or to miniſter the ſacraments, in "ſuch manner and form as is mentioned in the ſaid book; he "ſhall for the firſt offence forfeit one hundred marks, for the "ſecond four hundred, for the third all his goods and chattels, "and ſuffer impriſonment for life." 1 Eliz. c. 2. §. 9. 10, 11. Is the offence of ſpeaking againſt the common prayer, of the ſame magnitude with obſtructing the reading of it, perhaps by violence? If not, where is the wiſdom and juſtice of making the penalty, in theſe two very different caſes, the ſame?

ſequence

ſequence charged upon them and their principles, that the fault is neither in the cauſe which they eſpouſe, nor in their management of it; and therefore they cry out upon foul play in their antagoniſts, upon their miſrepreſenting and reviling what perhaps they only exhibit in a right point of view. To draw the line between reaſoning and reviling, in every caſe, is indeed no eaſy matter; and I muſt beg your excuſe, Sir, if I preſume to ſay, that I believe you found it ſo, by the lax and uncertain ſtate in which you have left this queſtion; oppoſing only the two extremes of thinking and railing to each other, and leaving it in doubt in what claſs, whether of things allowed, or of things prohibited, is to be ranked reaſoning in ſupport of direct poſitions and plain declarations. But was it right to leave a point of this conſequence wholly doubtful and undetermined? Becauſe, in particular caſes, it may be difficult to mark the difference between aſſerting and reaſoning on the one hand, and railing or reviling on the other, was it right, that no exception ſhould be made in favour of a man's declaring his ſentiments, and ſupporting them in the beſt manner he is able in the way of reaſoning and argument?

You admit it, I own to be clear, that "no reſtraint "ſhould be laid upon rational and diſpaſſionate enquiries "into the rectitude and propriety of the eſtabliſhed mode "of worſhip." In what degree *enquiries* concerning the propriety of the eſtabliſhed mode of worſhip may come within the intendment of the act, or whether they do at all, I will not pretend to determine. Enquiring, in the proper import of the term, may not perhaps amount to *declaring* or ſpeaking any thing in open words in derogation of, that is, advancing a plain poſition againſt, the liturgy, or any part of it. But then, I apprehend, the queſtion is not ſo much concerning mere enquiries, as concerning direct poſitions and arguing in ſupport of them *; the act, as I before obſerved, being plainly levelled

* A learned biſhop obſerves, that "it is ſomething odd, to "have two creeds" (the Nicene and Athanaſian) "eſtabliſhed "in

velled againſt allowing thoſe who diſlike the liturgy, or ſcruple the uſe of it, to aſſign and defend the grounds of their opinion and practice; and that even when attacked by others. So that whatſoever be the caſe concerning mere rational and diſpaſſionate enquiries into the propriety of the eſtabliſhed mode of worſhip, I preſume it is very plain, from the expreſs words of the ſtatute, that every poſitive aſſertion or *declaration* of a perſon's ſentiments concerning the impropriety of that mode in any one reſpect (the act referring not only to the book in general, but to "every part of it, and every thing therein contained") comes within the meaning of "ſpeaking in open words in "derogation of the common prayer." And this obſervation, if it be juſt, as I think it is, ſuperſedes all occaſion of diſtinguiſhing between aſſerting and reaſoning on the one hand, and railing or reviling on the other; becauſe it ſhews, that the act alike comprehends and condemns both of them. And therefore, Sir, unleſs you intend to prohibit every ſuch aſſertion or declaration of opinion concerning the impropriety of any part of the eſtabliſhed mode of worſhip, though ſupported by the moſt ſubſtantial reaſons, I hope you will, as with ſubmiſſion I think you ſhould, retract your approbation of theſe ſevere clauſes in the act of uniformity.

If any rail at the church and its ordinances, I am not the advocate of ſuch perſons. Railing is always unwarrantable, and never ſerviceable. And yet, I ſuppoſe, if

"in the ſame church, in one of which thoſe are declared accurſ-"ed, who deny the Son to be of the ſame uſia, or hypoſtaſis, "with the Father;" (εξ ἑτερας ὑποστασεως ἡ ουσιας φασκοντας εἶναι — τους αναθεματιζει ἡ καθολικη ἁγια αποστολικη εκκλησια. Symb. Nicen. vid. Socrat. Hiſt. Eccl. l. 1. c. 8.) "and in the other it is declared, they can-"not be ſaved, but periſh everlaſtingly, who do not aſſert, that "there is one hypoſtaſis of the Father, and another of the Son." See the late biſhop of Clogher's Eſſay on Spirit, p. 146. edit. 2. I ſhould be glad to know under what head this *direct charge* is to be arranged; whether it amounts to *declaring* any thing in derogation of the liturgy? and conſequently, whether it comes within the intendment of the act?

it

it hath ever been employed againſt the common prayer, it hath ſeldom been for the reaſon you aſſign, that the church "will not ſubmit her publick judgment to the "private opinion of others." I rather think, in ſuch caſes, it is generally owing to an imagination at leaſt, that the object of ridicule is really contemptible; and that the publick judgment is not ſo very ſacred, as to ſanctify every thing which hath the ſanction of publick authority. Whether this apprehenſion be ſufficient to juſtify ſuch conduct, is a different conſideration.

You endeavour, I perceive, to ſupport your approbation of this act, by remarking, that "contumely and contempt are what "no eſtabliſhment can tolerate:" and in confirmation of this, you have inſerted this note in the margin, that, "by an ordinance 23 Aug. 1645, preach-"ing writing or printing any thing in derogation or de-"praying of the directory for the then eſtabliſhed preſby-"terian worſhip, ſubjected the offender upon indictment "to a diſcretionary fine, not leſs than five, and not ex-"ceeding fifty pounds." I am ſorry, Sir, you ſhould pay ſo great a compliment to this ordinance (ſo much beyond what I think it deſerves) as to produce it in defence of this favourite act of Elizabeth. It is ſo far from being, in my humble opinion, an authority ſufficient to give countenance to a thing diſputable or exceptionable, that the framers of it were very culpable in following the bad example ſet them by that act. And yet it ſhould in juſtice be obſerved, that even in this inſtance of retaliation (which, I admit, cannot be juſtified) they aſſigned a far more moderate penalty than was before done; a fine not leſs than five, yet never exceeding fifty pounds, being much below one hundred marks for the firſt offence, four hundred for the ſecond, and forfeiture of goods and chattels and impriſonment for life for the third. And this they laid, not as in the caſe before them, upon "declar-"ing or ſpeaking any thing in open words," but only upon "preaching, writing, or printing, in derogation or "deprav-

"depraving of the directory, with intent to bring it into "contempt or neglect, or to raiſe oppoſition againſt it."

But notwithſtanding, Sir, the favourable light in which you have placed this ordinance, I cannot prevail upon myſelf to approve it. For ſure I am, whatever religious inſtitutions cannot be ſupported, without the aid of ſuch penal ſtatutes or ordinances to ſecure them from contempt and ridicule, had better not be ſupported at all. If reaſon and argument are on their ſide, contempt and ridicule in the end, will do them no real prejudice; and provided reaſon and argument are not on their ſide, it is no matter how ſoon they are diſcarded. By this, Sir, you may perceive, that I have no better opinion of penal laws in ſupport of a Preſbyterian, than of an Epiſcopal eſtabliſhment. The Preſbyterians, I confeſs, formerly copied too nearly the example of the Epiſcopalians. The genuine principles of univerſal and impartial liberty were very little underſtood by any; and all parties were too much involved in the guilt of intolerance and perſecution. The Diſſenters in our times freely acknowledge this, and condemn the narrow principles of many of their predeceſſors; having no objection to tranſmitting down to poſterity, in their true colours, the acts of oppreſſion and intolerance of which all ſects have been guilty; not indeed, as is ſometimes done, with a view of encouraging ſuch conduct in one party by the example of others; but of expoſing it alike in all, and preventing it wholly, if poſſible, in time to come.

The obſervation, which you make at the cloſe; namely, that "a rigid attachment to trifles, and an intemperate "zeal for reforming them, are equally ridiculous and ab- "ſurd;" would, I admit, be very juſt, and quite applicable to the preſent caſe, provided only the things in queſtion were merely trifles. But that is gratis dictum; and, I believe, you will allow, that, in matters of this nature, the moſt venerable ipſe dixit deſerves no regard: and that even

even your authority, Sir, reſpectable as it is, cannot claim the privilege of being ſubſtituted in the room of reaſon and evidence.

With ſubmiſſion, Sir, the power of decreeing rites and ceremonies, and authority in controverſies of faith, claimed by the church; the authoritative abſolution of ſin, in the viſitation of the ſick *; the expreſſions of ſtrong hopes of the

* The rubrick orders, that "the ſick perſon ſhall be moved to "make a ſpecial confeſſion of his ſins, if he feel his conſcience "troubled with any weighty matter. After which confeſſion "the prieſt ſhall abſolve him (if he humbly and heartily deſire "it) after this ſort:

"Our Lord Jeſus Chriſt, who hath left *power to his church* "to abſolve all ſinners who truly repent and believe in him, of "his great mercy forgive thee thine offences: And by his au"thority *committed to me*, I abſolve thee from all thy ſins, in the "name of the Father, and of the Son, and of the Holy Ghoſt. "Amen."

And how this authority *is committed* to the prieſt, may be ſeen in the office of ordination, where the biſhop, putting his hand on the head of the perſon to be ordained, ſaith, "Receive the "Holy Ghoſt——Whoſe ſins THOU doſt forgive, they are for"given; and whoſe ſins THOU doſt retain, they are retained; "in the name of the Father, of the Son, and of the Holy "Ghoſt. Amen."

There is ſomething ſimilar in the office of confirmation, where the biſhop lays his hand on each individual, "*to certify him by* "*this ſign*" (as the collect expreſſes it) "of God's favour and "gracious goodneſs towards him."—Though the twenty-fifth article, by the way, affirms, that "confirmation hath not any "viſible *ſign* or ceremony ordained of God."

If thoſe expreſſions and actions are underſtood according to their obvious import, and as I fear they are often underſtood, as in the one caſe conveying, and in the other exerciſing extraordinary powers; they mean *too much*. If they are underſtood, as they are ſometimes explained, or explained away rather; they are in danger of being conſidered as nothing better than *ſolemn trifling*, as "graſping at the ſhadow of an authority" (to uſe the words of the late Dr. Stebbing in his inſtructions of a pariſh miniſter to his pariſhioners on the ſubject of popery, part 2. p. 37, 38) "which we muſt all renounce. What elſe do we, when we pre"tend to abſolve conſcience? We may uſe an hundred diſtinc"ons, if we pleaſe: we may ſay, that the abſolution is not au"thoritative, but declaratory; or, that it is not judicial, but

"mini-

the happineſs of ſome perhaps of the worſt of men, in the burial of the dead; and the pronouncing damnation, in the creed aſcribed to Athanaſius; certain, inevitable and everlaſting damnation, upon every one that doth not believe the whole of it *; and in general, the impoſing ſuch unſcriptural forms to be uſed in the publick ſervice, and ſuch doctrinal articles to be ſubſcribed, as many wiſe and good men in the church can with difficulty, if at all, reconcile to their real ſentiments: theſe and ſeveral other particulars which might be mentioned, with all due deference to your judgment, Sir, are no trifles. And though I am not diſpoſed to caſt unjuſt or ſevere reflections upon any of the publick forms, I really cannot help hinting up-

" miniſterial: but if you would ſpeak to be underſtood, you muſt " ſay, that with reſpect to any real internal effect it is NOTHING; and you will ſpeak *truth* too: for all the reſt, if you " will preſerve to God his *prerogative* to forgive ſin, are words " without meaning." I only add, that it would be more manly, rational, chriſtian, to alter ſuch paſſages, than to attempt to explain them: which, I apprehend, it is impoſſible to do, in a way conſiſtent with reaſon and ſcripture.

* It is obſervable, that with reſpect to thoſe concerning whom the Athanaſian creed declares, that they ſhall WITHOUT DOUBT *periſh everlaſtingly*; the burial office, appointed to be read over the ſame perſons, if they are not excommunicated, thanks God that he hath in GREAT MERCY *taken them to himſelf*, and HOPES *that they reſt in* Chriſt.

It is not my deſign to enter upon the particulars of the controverſy between the Church and the Diſſenters. They may be ſeen on the Diſſenting ſide, in all their ſtrength, in the Diſſenting Gentleman's (I think, unanſwerable) Letters to Mr. White. I only obſerve, that if the power and authority, claimed in the twentieth article, of decreeing rites and ceremonies and deciding controverſies of faith, be once proved; the debate will be brought to a ſhort iſſue: but till then, the ground of diſſent will remain firm; ſince there can be no obligation upon us, in point of conſcience, to comply with any rite or ceremony, or any deciſion of faith, which we do not ourſelves perceive to be divinely appointed; and that, whether it be of greater or leſs importance: nay, it is rather our duty to oppoſe the *impoſition* of all ſuch rites or ſuch articles, out of regard to the ſovereign authority of Chriſt; which, in ſuch caſes, is the ſole ground of obligation upon Chriſtians.

on

on a proper occaſion (with all due reſpect to the ſtatute) how things appear to me; how indeed they have appeared to others, not to Diſſenters only, but to many who have been the glory of the Eſtabliſhed Church; and have, nevertheleſs, wiſhed for alterations in theſe and many other particulars; ſuch alterations, as you, Sir, eſteem very improper to be attempted; becauſe, you ſay by the act of union between England and Scotland, the conſtitution and worſhip of the two churches reſpectively are rendered immutable: a point, which deſerves to be diſtinctly examined.

I am Sir, &c.

LET-

LETTER V.

SIR,

THE attempts to procure a further reformation in the church have been many and various. But while I enjoy my liberty as a Chriſtian, and a Proteſtant Diſſenter, I am not ſolicitous, on my own account, whether any alterations are made in the conſtitution or liturgy of the church of England. I deſpair of ever ſeeing the terms of conformity ſo enlarged and liberal, as to invite me into the eſtabliſhment. But when I conſider, that there are perſons already in the communion, and even in the orders of the church, who deſire, and endeavour to obtain, a reformation of various particulars which they, as well as Proteſtant Diſſenters, think ought to be reformed; I am ſorry, on their account, and for the intereſt of religion in general, whenever I ſee difficulties thrown in the way of a deſign ſo laudable, and ſo deſirable. In this view, it is with no ſmall concern, that I obſerved you laying ſo much ſtreſs on the following ſentiment: That "an alteration in the conſtitution or liturgy of the church "of England, would be an infringement of the fundamental and eſſential conditions of the union between "England and Scotland, and would greatly endanger "that union *."

I will firſt make ſome remarks upon this queſtion, according to your ſtate of it; and then explain the particular view in which, I think, it ought to be conſidered.

I obſerve that you allow, that, notwithſtanding the act of union, and the conditions therein enacted, there is a competent authority in the Britiſh parliament for making

* Comment. vol. i. p. 98.

ſuch

ſuch alterations in the church *. And if ſo, whether the parliament ſhould venture to exerciſe that power, is merely a queſtion of prudence and expedience. You declare your opinion, that "it will endanger the union." With ſubmiſſion, I cannot conceive, there could be any great danger in a parliamentary review and alteration of ſuch things, as it would be agreeable to the members of the church of England themſelves ſhould be altered; and eſpecially if it be apparent to the whole world, that the deſign takes its riſe in the church of England itſelf. The Scots would then have no reaſon to be alarmed; and I hardly think they would be ſo; becauſe the caſe here ſuppoſed, is no precedent for any alterations in their church, except what they themſelves ſhall deſire. Could we ſuppoſe, indeed, an attempt made of alterations in the church of England, at a time when the Scots had reaſon to apprehend a deſign, formed in England, to make alterations in the church of Scotland; and that alterations here were only made to furniſh a kind of precedent for carrying that deſign into execution; they might, and probably would, be alarmed. But I cannot ſee, for my part, any dangerous conſequences in the parliament's making what are generally conſidered to be real improvements (even tho' it ſhould not be thought abſolutely neceſſary to make them†)

* "It may be juſtly doubted," ſaith the learned Commentator, "whether ſuch an infringement of the act of union (though "a manifeſt breach of good faith, unleſs done upon the moſt "preſſing neceſſity) would conſequently diſſolve the union: for "the bare idea of a ſtate without a power ſomewhere veſted to "alter every part of its laws, is the height of political abſurdi"ty." Comment. vol. i. p. 97, 98. note. And in the Reply to Dr. Prieſtley, p. 20. ſpeaking of the *power* of alteration, he "ſaith, "it muſt neceſſarily reſide in the ſupreme legiſlature of "the united kingdoms." Again, p. 34. "Indeed I have al"lowed, that the *power* of new-modelling the churches "both of England and Scotland (however dangerous its ex"ertion might be) ſtill reſides in the parliament of Great"Britain."

† See Comment, vol. iv. p. 51. where the author ſaith, "It "would now" (ſince the union) be extremely unadviſable to "make any alterations in the ſervice of the church; unleſs it "could be ſhewn, that ſome manifeſt impiety or ſhocking abſur"dity would follow from continuing it in its preſent form."

in either church, provided it be done only in conformity with the general ſentiments and deſire of the reſpective churches themſelves. We ſee, in fact, that the paſſing the patronage act, in reſpect to the church of Scotland, was attended with no ſuch formidable conſequences as you ſeem to apprehend; though it was an infringement of the union, the more dangerous, becauſe that act was paſſed under the influence of Queen Ann's laſt miniſtry, in oppoſition to the general ſentiments of the Scottiſh nation.

In what I have ſaid, I have left all conſideration of the intention of the act of ſecurity of the church of England, included in the act of union between the two nations, entirely out of the queſtion. But after all, permit me to aſk, Whether it was not the ſpirit and deſign of theſe acts of ſecurity in both churches, to prevent the incroachments of one upon the other, after the union took effect? It muſt certainly be admitted, that an apprehenſion of ſuch incroachments upon each other, was the *occaſion* of thoſe acts; for if it had not been for the dangers apprehended by each church from the other, thoſe acts of ſecurity of the two churches had never been paſſed at all: and from the *occaſion* we may infer the *deſign*.

Beſides, if no alteration muſt be made in either of the two churches, becauſe the act of union hath ſettled things immutably in each; then the act of union amounts to a declaration of the legiſlature, that they would, and their poſterity ſhould, always think and act exactly as they did at that time: which, as Dr. Prieſtley obſerves, in his letter to you, publiſhed in the St. James's Chronicle of October 10, 1769, is ſo abſurd, that one would not willingly impute it to two ſuch auguſt aſſemblies as the parliaments of both kingdoms.

But there is another view in which this point may be conſidered, independently of any enquiry, what was the deſign of the two parliaments, or the two nations, at the time

time when the act of union was enacted; and which, I think is the true one: and it is this:

I believe it will be admitted, that in all *pacta conventa*, or union treaties, thoſe conditions which are previouſly inſiſted upon by either of the contracting parties in its own favour, and in which the intereſt of the others is not involved; though they are ratified in ever ſo ſolemn a manner, are nevertheleſs alterable, with the free conſent of that party who is alone intereſted therein. This is perfectly conſonant to reaſon, and to the nature of ſuch ſolemn pactions. Indeed, no conditions can be made ſo unalterable, that they cannot be reverſed in the caſe which is here ſuppoſed; that is, where the only party intereſted in the condition, and who inſiſted upon it for his own behoof, releaſes the obligation, and conſents to have it altered. And if this principle be allowed, the propriety of the application of it to the preſent caſe will appear, if we conſider, that the union between England and Scotland, though an incorporating union in many, was not ſo in all reſpects; and particularly that in their eccleſiaſtical capacities, or with regard to their reſpective churches, the two nations, who were the original contracting parties; ſtill continue ſeparate bodies: I ſay, the two nations were the original contracting parties; for this ſhould be carefully obſerved, that, ſtrictly ſpeaking, the two parliaments were not the contracting parties, but the two nations; for whom, and on whoſe behoof, the parliaments were only agents, or plenipotentiaries, executing an expreſs or implied truſt. And if ſo, either of the two churches, or nations, may authorize an alteration of any condition ſtipulated merely in its own favour, and in which the other hath no intereſt; that is, the Engliſh or the Scottiſh nation or church, may recede from the condition demanded and enacted in its own favour, even tho' moſt ſolemnly declared to be immutable. And on this footing, I mean, on the free conſent of the party intereſted therein, the parliament of Great-Britain may make the alterations in queſtion.

Indeed, you tell us, that, "without diſſolving the union, you do not ſee how the ſenſe of either nation could "now be ſeparately taken;" (that is) "how the Scots "Peers or Commoners could be prevented from voting "either for or againſt the repeal of the acts of uniformity, "in caſe it were moved in either houſe *." And I admit, that as the two parliaments are now ſunk into the one parliament of Great Britain, the ſenſe of the two nations cannot be ſeparately taken in parliament. But if the ſenſe of the two churches, or nations, in their ſeparate eccleſiaſtical capacity, may be known, that will be a ſufficient foundation for the parliament to proceed upon. For inſtance, if any alterations were requeſted of the parliament by the generality of either of the two churches or nations; or, if, upon a motion in parliament for ſuch alterations, and ſuch motion being ſufficiently known, they were not in a reaſonable time petitioned againſt by any conſiderable number, the parliament might preſume a general conſent, and muſt form their judgment of this from the notoriety of the fact.

And this is the footing upon which, I think, the caſe ſhould be put; and not merely upon a competent authority in the Britiſh parliament to make alterations in the two churches. And I am of this opinion, becauſe the parliament of Great Britain is to be conſidered as *guardian*, or in *truſt*, for both churches; and therefore cannot have any *authority*, that is, *right*, inherent in itſelf (for *nemo poteſt, quod non jure poteſt*) to diſpenſe with the conditions of the union, which were previouſly declared to be unalterable, *in thoſe particular reſpects in which the two nations ſtill continue ſeparate bodies*; here, I think, nothing but the conſent, expreſſed or implied, of each of theſe bodies, as to the condition ſtipulated in its own favour, can be ſufficient warrant for an alteration †.

Let

* Reply to Dr. Prieſtley, p. 17.

† The learned Commentator obſerves (Comment. vol. i. p. 98. note) that "ſuch an incorporate union" as that between England

Let this be illuſtrated by the caſe of the Diſſidents in Poland: Can it be thought, that there was an authority in the Poliſh diet to vacate the ſolemn *pacta conventa*, and the rights and privileges of the Diſſidents grounded upon them? I apprehend, the Diſſidents diſallow, and proteſt againſt, ſuch right or authority in the diet; and, I think, with reaſon; but they would have no ſuch reaſon to complain of any infraction of the original ſettlement, if no alterations had been made but at their own requeſt, or with their own free conſent.

On the whole, this ſtate of the queſtion appears to me to be the only one that is conſiſtent with the general nature of government as a truſt *, with the ſacred regard due

England and Scotland, "is well diſtinguiſhed by a very learned "prelate from a *fœderate alliance*, where ſuch an infringement" of it, as making alterations in either of the churches, "would "certainly reſcind the compact." Now it happens, that England and Scotland, in their eccleſiaſtical capacities, are not *incorporated*, but only in a *fœderate alliance*; and therefore, by his own argument, the Parliament can have no right to make alterations in either of the two churches, *without its conſent*; ſince the compact would be thereby reſcinded: but with ſuch conſent, it certainly may; volenti non fit injuria.

† The learned author obſerves, that "the bare idea of a ſtate "without a power ſomewhere veſted to alter every part of its "laws, is the height of political abſurdity." (Comment. vol. i. p. 97, 98. note) A poſition, which I apprehend, ought to be, in ſome meaſure, explained and limited. For, if it refers to thoſe particular regulations, which take place in conſequence of immemorial cuſtom, or are enacted by poſitive ſtatute; and at the ſame time are ſubordinate to the fundamental conſtitution, from which the legiſlature itſelf derives its authority; it is admitted to be within the power or truſt veſted in the legiſlature to alter theſe pro re natâ, as the good of the ſociety may require. But this power, or authority of the legiſlature to make alterations, cannot be ſuppoſed to extend to the infringement of thoſe eſſential rights and privileges, which are reſerved to the members of a free ſtate at large, as their undoubted birthright and unalienable property. I ſay, in every free ſtate there are ſome liberties and privileges, which the ſociety have not given out of their own hands to their governors, not even to the legiſlature: and to ſup-

due to ſuch *pacta conventa*, as the act of union, and with the rights thereby reſerved to each of the two churches; and, on thoſe accounts, to be much preferable to acknowledging on the one hand, a power in the parliament to diſpenſe with ſuch ſolemn conditions, when, and as far as, *they* ſhall think there is ſufficient ground for it; or to holding, on the other hand, ſuch conditions to be unalterable, whatever change of circumſtances may render an alteration, in the general opinion, expedient and neceſſary.

poſe the contrary (if I may be allowed the expreſſion) would be the height of political abſurdity; for it is ſaying, that a ſtate is free and not free at the ſame time; or, which is the ſame thing, that its members are poſſeſſed of liberties, of all which they may be diveſted at the will of the legiſlature; that is, they enjoy them during pleaſure, but can claim no property in them.

In a word, nothing is more certain than that government, in the general nature of it, is a truſt in behalf of the people. And there cannot be a maxim, in my opinion, more ill-grounded, than that there muſt be an *arbitrary* power lodged ſomewhere in every government. If this were true, the different kinds of government in the world would be more alike, and on a level, than they are generally ſuppoſed to be. In our own government in particular, though no one thinks with more reſpect of the powers which the conſtitution hath veſted in every branch of the legiſlature; yet I muſt be excuſed in ſaying, what is ſtrictly true, that the whole legiſlature is ſo far from having an *abſolute power*, that it hath not *any power*, in ſeveral caſes that might be mentioned. For inſtance, their authority does not extend to making the Houſe of Commons perpetual, or giving that Houſe a power to fill up their own vacancies; the Houſe of Commons being the repreſentatives of all the Commons of England, and in that capacity only a branch of the legiſlature; and if they concur in deſtroying the foundation on which they themſelves ſtand; if they annihilate the rights of their conſtituents, and claim a ſhare in the legiſlature upon any other footing, than that upon which the conſtitution hath given it to them; they ſubvert the very truſt under which alone they act, and thereby forfeit all their authority. In ſhort, they cannot diſpenſe with any of thoſe eſſential rights of the people, reſpecting their liberties, properties, or lives, the preſervation of which ought to be the great object of government in general, as it is of our conſtitution in particular. See an excellent paſſage to this purpoſe in Dr. Hutcheſon's Syſtem of Moral Philoſophy, book 3. chap. 7. vol. 2. p. 267. at the beginning.

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In ſhort, this argument, drawn from the immutability of the church in conſequence of the act of union, between the two nations, ſeems to me to be an uſeful engine to be played off by thoſe who are averſe to any alterations; but I believe, (I ſpeak only in general,) would not have much ſtreſs laid upon it by thoſe who are inclined to them.

However, if it be ſo, that the act of union renders every tittle and iota of the church conſtitution and liturgy immutable; this conſideration furniſhes the ſtrongeſt argument for *their* ſeparating entirely from the church, who are diſſatisfied with the preſent ſtate of things in it; inaſmuch as this invariable ſettlement precludes all hope of future amendment.

In your anſwer to Dr. Prieſtley you ſay, you "have "neither leiſure, inclination, nor ability to dip yourſelf in "theological controverſy *." Will you ſuffer me to remind you, Sir, that, if this be the caſe, you ſhould not have *decided* a theological controverſy, on which volumes have been written, in ſo ſummary a manner as you have done, when you ſay, "That many Diſſenters divide from "the church upon matters of indifference, or in other "words, upon no reaſon at all †."

To judge of the propriety and truth of this aſſertion; I firſt obſerve, that it is not agreed on both ſides, that the things in queſtion are indifferent. And, I think, whoever reads the Diſſenting Gentleman's excellent letters to Mr. White, and conſiders his objections to the preſent terms of conformity, muſt at leaſt admit, that a great deal may be advanced to prove, that the things in debate are not indifferent, but ſuch as every judicious, as well as conſcientious perſons, may reaſonably ſcruple to comply with. However, even ſuppoſing them to be indifferent, I obſerve,

* Reply to Dr. Prieſtley, p. 4.

† Comment. vol. iv. p. 52.

That the authority by which they are injoined, and made neceſſary to the inſtitutions of Chriſt, and to a participation of Chriſtian ordinances, may be reaſonably called in queſtion. The twentieth article of the church of England aſſerts, indeed, "that the church hath power to decree rites "and ceremonies, and hath authority in matters of faith." But this the Diſſenters muſt be allowed to controvert. They aſſert, that Chriſt alone hath this authority; that no power can make that neceſſary, which he hath not made neceſſary; and that what is indifferent in its own *nature*, ought to be left indifferent in *practice*, and ſhould not be bound upon Chriſt's ſubjects either by civil or eccleſiaſtical laws; neither of which can, in this caſe, be of any validity, as being both alike of human origin.

That "all things ſhould be done decently and in order *," they admit; and in the ſenſe of the apoſtle Paul, they aſſert with as much zeal as any other perſons. But they think, there is a manifeſt difference between circumſtances of natural decency and order, which are neceſſary to be agreed upon and obſerved, in order to the performance of any divine worſhip at all; and ſuch rites and ceremonies, ſuch additions to divine inſtitutions, as are not at all neceſſary, in the reaſon of the thing, or by any law of Chriſt; but only injoined by a human, that is, in this caſe, incompetent authority. "A power in the church "to decree rites and ceremonies, and authority in mat-"ters of faith," is a principle ſo extenſive in its influence, that, under the ſhadow of it, have grown up all the enormous innovations and ſuperſtitions of the church of Rome †: And if Diſſenters ſhould diſcover any averſion to giving

* 1 Cor. xiv. 40.

† The following obſervations of Dr. Prieſtley, upon this head, in his View of the principles and conduct of the Proteſtant Diſſenters, p. 59. are very ſenſible. "It ſhould be conſidered," faith

giving countenance to ſuch a principle, and its genuine conſequences, excuſe me, Sir, if I think, they are more

ſaith he, " that a *power of decreeing rites and ceremonies*, is a " power abſolutely indefinite, and of the very ſame kind with " thoſe claims, which, in things of a civil nature, always give " the greateſt alarm. A tax of a penny is a trifle; but a power " of impoſing that tax is never conſidered as a trifle, becauſe " it may imply abſolute ſervitude in all who ſubmit to it. In " like manner the enjoining of the poſture of kneeling at " the Lord's Supper is not a thing worth diſputing about " in itſelf, but the authority of enjoining it *is*; becauſe it is, " in fact, a power of making the Chriſtian religion as bur- " denſome as the Jewiſh, and a power that hath actually been " carried to that length in the church of Rome. Nor do we ſee " any conſiſtence in the church of England rejecting the autho- " rity of Rome in theſe things, and impoſing her own upon " us."——

Again, p. 66. " Our anceſtors, the old puritans, had the " ſame merit in oppoſing the impoſition of the ſurplice, that " Hampden had in oppoſing the levying of ſhip-money. In " neither caſe was it the thing itſelf they objected to, ſo much " as the authority that enjoined it, and the danger of the prece- " dent. And it appears to us, that the man who is as tenacious " of his *religious* as he is of his *civil liberty*, will oppoſe them " both with equal firmneſs.

" All the difference then, in the conduct of men who " equally value their liberty, will be in the *time* and *manner* " of oppoſing theſe incroachments upon it. The man of a " ſtrong and enlarged mind will always oppoſe theſe things in " the beginning, when only the reſiſtance can have any effect; " but the weak, the timid, and ſhort-ſighted, will attempt no- " thing till the chains are rivetted, and reſiſtance is too late. In " civil matters, the former will make his ſtand at the levying " of the firſt penny by *improper authority*; and in matters of " religion, at the firſt, though the moſt trifling ceremony, that " is, without reaſon, made neceſſary; whereas the latter will " wait till the load, in both caſes, is become too heavy to be " either ſupported or thrown off." And by theſe reaſons he ſupports his remark, p. 58. that " the oppoſition made by " the firſt nonconformiſts to the injunction of a few ceremo- " nies, was an argument of great *ſtrength of mind*; and that " they acted upon more juſt and enlarged views of things, than " thoſe who ſuperciliouſly affect to ſtigmatize them as men of " *weak minds*." Whether the puritans underſtood the princi- ples of liberty ſo thoroughly, and acted upon ſuch enlarged views

more than pardonable in so doing, and should not have been represented as acting upon no reason at all. ——I am, Sir, &c.

views of things, as they are here represented to have done, I will not pretend to say. Of this, however, I am very certain, that all these observations are true and just as applied to the modern Dissenters.

LETTER VI.

SIR,

I Obſerve in your Commentaries a very remarkable paſſage, which aſſerts the abſolute neceſſity of excluding all Diſſenters from civil offices, as a thing *eſſential* to the *very idea* of a national eſtabliſhment.—You ſay, "He," "(that is, the magiſtrate) is bound to protect the eſta-"bliſhed church, by admitting none but its genuine mem-"bers to offices of truſt and emolument: for if every ſect "was to be indulged in a free communion of civil em-"ployments, the idea of a national eſtabliſhment would "at once be deſtroyed, and the Epiſcopal church would be "no longer the church of England *." That is extraordinary indeed! Some have talked of the ſecurity which may ariſe to the church from this excluſive privilege; and you intimate it yourſelf, when you ſay, it is the magiſtrate's duty to *protect* the church by this method. Others have inſiſted upon I know not what kind of alliance or contract, in which this excluſive privilege was ſtipulated for the church. But that the church would loſe her *exiſtence* and *eſſence* without it, ſeems to be very ſtrange. What! cannot the church be eſtabliſhed in the poſſeſſion and enjoyment of her own peculiar temporalities, her tythes, prebends, canonries, archdeaconries, deanries, and biſhopricks by law, unleſs ſhe engroſs all civil as well as eccleſiaſtical offices to herſelf? Can there be no legal eſtabliſhment of, and no legal and national proviſion made for, a *church*, unleſs all the offices and emoluments of the *ſtate* are annexed to it? Was there no national church properly eſtabliſhed by law in England till the teſt-act was enacted, which appropriated all civil offices to perſons of her communion, in the reign of Charles the Second? And

* Comment. vol. iv. p. 53.

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is there none now in Scotland, where civil offices are not confined to the Preſbyterians, who have been hitherto ſuppoſed to be the eccleſiaſtical eſtabliſhment in that country? Is there, I ſay, no ſuch eſtabliſhment in Scotland? is the very idea of it deſtroyed, and the Preſbyterian church no longer the eſtabliſhed church of that part of the united kingdom? I apprehend, this will hardly be affirmed; and if ſo, an excluſive right to civil offices cannot be eſſential to the very idea of a church-eſtabliſhment *.

Indeed, I would not willingly ſuppoſe any thing ſo unjuſt can be eſſential to an eccleſiaſtical eſtabliſhment. For certainly good ſubjects, if they are by law deprived of the capacity of ſerving their king and country, in thoſe offices for which they are qualified, and which poſſibly they might otherwiſe obtain, are injured by ſuch excluſion. I do not ſay, that the actual poſſeſſion of civil offices is the right of any ſubject; but a capacity of being elected or appointed to them, is the right of every good ſubject; and being deprived of that capacity is plainly an injury; and every injury done a man merely for his religion, and not on a civil account, is, in my opinion, a degree of perſecution: I know no other definition of perſecution, than

* The paragraph, which gave occaſion to the preceding remarks, is greatly altered in the new edition: it now runs thus: "He," that is, the magiſtrate, "is bound to protect the eſta-"bliſhed church: and, if this *can be better effected* by admitting "none but its genuine members to offices of truſt and emolu-"ment, he is certainly *at liberty ſo to do*; the diſpoſal of offices "being matter of favour and diſcretion." He is bound to protect the eſtabliſhed church, ſaith the learned Commentator: the truth is, he is bound to protect all good ſubjects, of every religious perſuaſion; but none of any perſuaſion, at the expence of all the reſt, and by encroaching on their undoubted rights; amongſt which we are to reckon, though not the *actual poſſeſſion* of offices, yet certainly a *capacity* of being appointed to them; which is not "a matter of favour and diſcretion;" for every good ſubject hath a natural right, not to be proſcribed as unworthy of the publick confidence. Whether ſufficient reaſon can be aſſigned, for infringing this right in regard to Proteſtant Diſſenters, is conſidered in the ſubſequent part of this letter.

that

that it is an injury inflicted on a perſon for his religious principles or profeſſion only.

A teſt-law, appropriating all civil offices to the members of the church, hath been vindicated, even on ſuppoſition of its being contrary to the law of nature, by inſtances of municipal laws, made, in direct oppoſition to the law of nature, for the publick good *. But, in ſuch caſes, the

* See the Biſhop of Glouceſter's Alliance between Church and State, p. 320. edit. 4.

In Mr. Forſter's late viſitation ſermon (preached at Chelmsford May 22, 1770) entitled, "The eſtabliſhment of the church of "England defended upon the principles of religious liberty," I find the ſtreſs of the argument for an eſtabliſhment, together with an excluſion of all but its own members from civil offices, laid upon the following ſentiments: "What ſecurity," ſaith the author, "doth the eſtabliſhment require for its preſervation and "defence?" To which he anſwers, "It only doth not put arms "into the hands of its enemies. It requires only, that thoſe "who profeſs to diſſent from its doctrines ſhould be excluded "from offices of power and influence in the government, that is, "they are kept out of ſituations which would render their opi-"nions dangerous to that mode of religion which the conſtituti-"on hath adopted and made its own." p. 13. "For every ſtate, "as well as every individual," he ſaith, "hath a right to judge "for itſelf in matters of religion, or to chooſe its own religion." p. 14. With reſpect to what is here advanced, as the foundation of the whole ſuperſtructure, that, "every ſtate hath a right "to chooſe its own religion as well as every individual;" I obſerve, that the ground of this inference in theſe two caſes, is very different. The reaſon, upon which every individual hath a right to chooſe his own religion, is, becauſe religion is the reſult of perſonal conviction, and the rewards of it ſought and obtained, not by collective bodies, but by individuals, as the fruit of their own perſonal character and conduct. In the caſe of a ſtate, or civil ſociety, chooſing a particular religion, thoſe grounds of election which I have mentioned can have no place: the ſole intereſt which a civil ſociety can have in this matter, is in promoting the good order of the community; and this is effectually provided for by the magiſtrates encouraging the general principles of religion and morality which prevail amongſt all parties, and which are by no means peculiar to any peculiar ſyſtem or mode of worſhip.

Again, I obſerve, that by "the ſtate's chooſing its own religi-"on," the author means, chooſing a religion in order to its being

the advantage to the public ought to be very apparent, and of conſiderable moment; and even then, is rather to be

ing eſtabliſhed, with excluſion of all but its own members from civil offices and emoluments. A very different caſe from that perſonal choice, which every individual makes of a religion for himſelf. Had he meant no more than that the ſeveral members of the ſtate, or the magiſtrates and perſons in office, have a right, as individuals, to judge for themſelves as much as any other members of the community; the obſervation would have been true, but nothing to the purpoſe. But the right of an individual to chooſe the religion which he is to profeſs and practiſe, and the right of a ſtate to chooſe the religion which it is to eſtabliſh, and on the profeſſors of which it is to beſtow an excluſive title to its civil offices, are things widely different; particularly in this reſpect, that the former, the right of an individual to chooſe his own religion, interferes in no reſpect with the rights of any other perſon; whereas the latter, the right claimed by a ſtate firſt to chooſe, and then to eſtabliſh with an excluſive teſt, a particular religion, does incroach upon the rights of others, by laying upon them an incapacity of enjoying thoſe privileges and advantages to which, in common with their fellow ſubjects, they have a natural claim.

However, "ſuch an eſtabliſhment, with excluſion of all "but its own members from civil offices," the author ſaith, "is a "meaſure neceſſary to be adopted, in order to prevent the ill "effects of the peculiar opinions of others, firſt upon their own "paſſions, and in conſequence upon the peace and order of that "ſociety, which having choſen and eſtabliſhed a different mode "of religion, muſt have the ſame right to preſerve what it "hath thus eſtabliſhed, that it hath to preſerve itſelf." Upon this I would obſerve, that the defence and preſervation of ſociety in general, and all its members, from the ill effects of the peculiar opinions of the different ſects of which it conſiſts; that is, from violence (for the weapons of reaſon and argument, he immediately adds, are left untouched in their hands) I ſay, the defence and preſervation of all the members of ſociety are abundantly provided for, if the magiſtrate, as conſervator of the publick peace, interpoſe to prevent their perſecuting, or any way moleſting each other. To conſider, as the author does, perſons of different religious perſuaſions as "enemies," when he repreſents the ſecurity of a religious eſtabliſhment to be that "it only doth not put arms into the hands of its enemies," is, I think, no very liberal notion. But if they are ſo, I do not ſee but the influence and authority of the magiſtrate over the whole community may controul that enmity, and keep it within proper bounds; nor can I think, that partiality to any one ſect,

be conſidered as an *excuſe* for ſuch deviations from the law of nature, or general principles of equity, in the preſent imperfect

ſect, taking it into his peculiar good graces to the excluſion of all the reſt, will be likely to aſſuage that enmity; it rather ſeems calculated to enflame it, to create no ſmall jealouſy in thoſe who have the monopoly of civil offices and emoluments, and no leſs envy in thoſe who are deprived of them. It is very obſervable, that a ſpirit of domination and contention aroſe in the Chriſtian church in proportion to the increaſe of the emoluments and power of its eccleſiaſtics; and that till Chriſtianity was incorporated with the ſtate or civil conſtitution, in the time of Conſtantine, there were no examples of the debates and diviſions among Chriſtians iſſuing in actual perſecution of each other, on account of difference in religious ſentiment; but no ſooner were worldly emoluments connected with the profeſſion of it, and either beſtowed by the court, or obtained by the ſuffrages of the people, than the great ſtruggle was, who ſhould poſſeſs them excluſively; and the ſeveral parties, as the moſt effectual means of annihilating each others pretenſions, fell to hereticating, anathematizing, and perſecuting one another. But if the emperor had favoured all alike, had either diſtributed temporal emoluments among them equally, or rather had conferred them upon none, I apprehend the peace of the church and the world would not have been ſo ſcandalouſly violated, as it hath been, by contentions for riches and power among the ſeveral Chriſtian ſects, and eſpecially their reſpective eccleſiaſtics, and by their mutual perſecutions and violence. The large temporalities with which the church was ſoon endowed, and the principality which was at length beſtowed on the pope, raiſed the church of Rome, and the whole fabrick of popery, to the enormous height to which they afterwards arrived. And from popery the Proteſtants brought with them, and retained among them after the reformation, an unhappy attachment to the ſhackles of human authority, and of human inventions and definitions; and as the natural conſequence, a rigid, intolerant ſpirit. In a word, if we examine the matter cloſely, we ſhall find, that human inventions in divine worſhip, human definitions of faith, and the excluſive enjoyment of worldly emoluments, as the reward of adhering to a particular ſyſtem which happens to be eſtabliſhed; theſe are the things, which have produced whatever there is of an hoſtile ſpirit amongſt the various ſects of religioniſts, and created all that neceſſity (if there be any) of mutual ſelf-defence on which the author ſo much enlarges. Aboliſh human inventions, and human definitions, which human pride for the credit of the reſpective parties is always concerned to ſupport, and remove that monopoly of worldly emoluments for which this author

imperfect ſtate of ſociety, than as a full and abſolute *juſtification* of them. However, ſhould an excluſion of good ſubjects

author pleads ſo ſtrenuouſly; and, religion being no longer a matter of ſecular intereſt, the ſpeculative differences concerning it will hardly excite more contention than different ſchemes of philoſophy; and its different modes, than different manners and cuſtoms in civil life. Men will eaſily apprehend, as ſoon as their ambitious and intereſted views ceaſe to miſlead their judgments, that the eſſence of religion, which lies in a few general principles, and in good affections and habits, may very well conſiſt with an almoſt infinite variety of ſpeculative opinions, and external modes and forms; and unity of affection will eſtabliſh that peace and tranquility in the chriſtian church, which by fruitleſs endeavours after uniformity of ſentiment and practice, hath been in great meaſure, I had almoſt ſaid, wholly, baniſhed from it. Nor can I think, that where men live together in peace and harmony, a diverſity of religious ſentiments and practices is in itſelf an evil, or any way prejudicial to ſociety. I am ſure, if it be, ſome more effectual meaſures ſhould be taken than have yet been taken, to put an end to that variety of ſentiment which ſtill ſubſiſts amongſt the members of the national church, notwithſtanding they ſubſcribe and uſe the ſame creeds and formularies; nor ſhould that remarkable diverſity between the mode of worſhip in pariſh churches and cathedrals, be any longer permitted. Indeed, for the ſame reaſon no toleration ſhould be allowed; becauſe, under a toleration, there will perhaps be as great a variety of religious ſentiments and modes, as if there were no eſtabliſhment at all: and perhaps a greater; for as Biſhop Stillingfleet ſomewhere obſerves, "whatever limits, divides;" excluſive eſtabliſhments, founded upon human creeds and human canons, prevent the ſcripture from being regarded as the only rule of faith and order, and the only center of union. It is the advancing of theſe into the room of the ſcriptures, which hath been the grand ſource of all the ſects, and all the ſharp contentions among them, which have ever diſgraced and divided the Chriſtian church. And can we then reaſonably aſſert the neceſſity of excluſive eſtabliſhments, as a cure for the evils which they themſelves have cauſed?---Whatever uniformity hath been produced by them in reſpect to human creeds and forms, (in which for my part I can ſee no advantage) they have often produced likewiſe, either a great degree of bigotry where the compliance hath been ſincere, or of hypocriſy, where, as hath been frequently the caſe, men have been induced to profeſs and practiſe what they diſapprove and condemn.

To the objection, that upon the principles of this ſermon, "a "ſtate hath a right to eſtabliſh and defend a falſe religion as well

"as

ſubjects from civil offices on a religious account appear, upon examination, not to be at all for the public good,

" as the true one,—the Koran, the Veidam, and every other " the moſt abſurd, and even impious ſyſtem of doctrine and wor- " ſhip;" the author replies, that he " acknowledges the conſe- " quence," p. 15. " But then doth not the ſame objection," ſaith he, " lie equally againſt the right of an individual to chooſe " his religion, and defend his choice? This right." he adds, " cannot be compleatly exercifed in either caſe, but at the ha- " zard of chooſing a falſe religion." But there is this eſſential difference in the two caſes, that the individual who chooſes a falſe religion, ſeldom doth any prejudice by that wrong choice to any but himſelf: whereas a ſtate chooſing, and eſtabliſhing a falſe religion, with an excluſive right of civil employments (which amounts not only to defence, but to encouragement) lays ſuch inducements thereby in the way of all its ſubjects to embrace a falſe religion, as few comparatively are able to with-ſtand; and entails likewiſe this falſe religion on poſterity, by laws, which, while there are great worldly emoluments annexed to the obſervance of them, will not eaſily be repealed or altered. And thus ſuch motives as are with the generality irreſiſtible, to the embracing of a falſe religion, are eſtabliſhed and perpetuated, to the entire and perpetual excluſion perhaps of the true religion. And this conſequence is the more likely to follow, if, as the author aſſerts, " every ſtate muſt have a right to require, " that thoſe who are appointed to the duty of publick inſtructi- " on by the ſtate---ſhall inſtruct the people in thoſe doctrines " which it hath eſtabliſhed, and no other." p. 17. But none of theſe bad conſequences follow from that perſonal choice, which an individual makes of a falſe religion. And it is ſurpriſing, that theſe two caſes ſhould ever be conſidered as parallel, or that any ſenſible man, as the author certainly is, ſhould argue from the one to the other. In a word, true religion, as well as true philoſophy, is, I think, more likely to prevail and flouriſh upon the foot of its own intrinſic evidence, than by the interpoſition of human authority; which we ſee, in fact, over the largeſt part of the world, by far, eſtabliſhes a falſe religion, and excludes the true; and indeed nothing elſe can be expected, when religion depends for its reception and eſtabliſhment upon princes and politicians, who are too often under the dominion of ſuch maxims and views as are diametrically oppoſite to its genuine principles and ſpirit. Whereas if the obſtacles, every where raiſed by human authority to the entrance and prevalence of true religion, were removed; and this heavenly gueſt ſuffered to recommend herſelf to all by the luſtre of her native charms, and the evidence of her divine original; I believe, the event would be a wonderful demonſtration of the truth of that old adage: Magna eſt veritas, et prævalebit.

then the very foundation of this defence (ſuch as it is) of an excluſive teſt is entirely deſtroyed. The queſtion therefore is, What is that public good ariſing from a teſt-law, and the excluſion of good ſubjects from civil offices, which overballances the right that every ſuch ſubject hath, on principles of reaſon and equity, to a capacity of being appointed to ſuch offices?

Upon the moſt general view of this point, it cannot appear to be for the good of the *magiſtrate*, or the *ſtate*, to be deprived of the power of availing itſelf of *the ſervices of any good ſubjects*. It is, ſurely, for the advantage of the ſtate, that none ſhould be rendered incapable of civil employments but thoſe whoſe affections or principles render them ſuſpected to the civil government; that is, who do not give proper teſtimony of their being good ſubjects: for the more numerous the perſons are who are capable of ſuch appointments, the greater is the probability of a proper choice, provided thoſe who make it diſcharge their duty to the publick with fidelity and judgment.

It may be alledged, perhaps, that the magiſtrate hath wiſely conſented to grant the church this excluſive privilege in order to obtain the *greater good* of the ſpecial ſervices of the church, in inforcing the duties of imperfect obligation, ſuch as gratitude, hoſpitality, generoſity, &c. which human laws cannot effectually inforce; and of an alliance with her, and a right by grant from the church to a ſupremacy over her, and to the power of appointing her miniſters and officers.

With regard to the ſervice which the church does the ſtate, by inforcing the duties of imperfect obligation, and by which ſhe is ſuppoſed to merit, in part, her excluſive privilege to civil offices; I obſerve, that if this be a reaſon for allowing capacity of civil employments to good ſubjects of any one religious perſuaſion, it is a valid reaſon for

for extending it to good ſubjects of all religious perſuaſion, and in particular, to the Proteſtant Diſſenters. For, in their religious aſſemblies, theſe virtues are inculcated, perhaps with as good effect, and with as much utility to ſociety, as amongſt Chriſtians of any other denomination. Upon this ſtate of the caſe, therefore, no ſufficient cauſe can be aſſigned, why they ſhould be excluded from a reaſonable and proportionable ſhare of the favour of the ſtate.

As for the church's giving up her independence and ſupremacy, and the appointment of her officers or miniſters, to the ſtate; it may be proper to enquire, to what this condeſcenſion, on the part of the church, may be ſuppoſed to amount. And here it ſhould be remarked, that the ſtate hath a right to a ſupremacy over all perſons, whether clergy or laity, of every religious perſuaſion, within her dominions; a right, founded in the nature of civil government, independent of any grant from the church; and in this ſenſe, the church could confer upon the ſtate no ſupremacy which it had not before; ſhe could not give it any new ſubjects, or increaſe its civil power.

The meaning, therefore, of this grant of ſupremacy muſt be, that the church admitted the ſtate to a ſupremacy in cauſes eccleſiaſtical, and to the appointment of her church officers; in lieu of which ſhe claims an excluſive right to the poſſeſſion of civil offices. And theſe, it is ſaid, are the terms of the grand alliance between the church and ſtate, upon which is grounded the equity of a teſt-law, excluding all from the poſſeſſion of civil offices, except the members of the eſtabliſhed church. But it doth not appear, that any ſuch terms were ever concerted and agreed between the church and the ſtate; it appears, on the contrary, that no ſuch *can be* ſuppoſed or *implied*, on any fair and equitable principles. For, all the peculiar temporalities of the church being ſolely the grant of the ſtate,

and her particular form and conſtitution being eſtabliſhed by its laws, the government of the church of courſe belonged to that authority which formed and endowed it; and when the ſtate appoints the miniſters and officers of the church, ſhe doth it upon this footing, that the proviſion made for their ſupport is her donation and eſtabliſhment. Now, on this ground, the ſtate was in undiſputed poſſeſſion of all the power of church-government, and of the appointment of church-officers, which ſhe at preſent enjoys, before any teſt was appointed, or nonconformiſts were by law excluded from civil offices. This excluſive right, therefore, now claimed by the church, to the offices of the ſtate, could be no part, no term, no condition, of the ſuppoſed *original* treaty of alliance between the church and ſtate. The claim is entirely *novel*; it is an uſurpation upon the ſtate, an attempt to introduce a new term or condition into the original contract, which ought therefore to be rejected as inadmiſſible.

If it be ſaid, that the church hath purchaſed this excluſion of Proteſtant Diſſenters from civil offices, by conſenting to a toleration of their religious profeſſion and worſhip; I obſerve, that this free enjoyment of their religious liberty was a natural right, of which they were never deprived but with manifeſt injuſtice; and the granting of their religious liberty, therefore, or the repairing of one act of injuſtice, can never be conſidered as a ſufficient reaſon, or tolerable excuſe, for a violation of their civil rights; that is, committing another act of injuſtice.

If it be further alledged, that the church's excluſive enjoyment of civil offices comes in as a balance to the toleration, as an acceſſion of ſtrength to the church; in order to counterpoiſe the danger which might accrue to her, were Diſſenters admitted to a free enjoyment of civil offices:

fices *: (whereas her ſecurity before the toleration conſiſted in this, that every man, whether in or out of office, was

* Thus argues the author of The Alliance, &c. p. 296, 297, and gives himſelf the credit of being of the ſame ſentiments with King William, whom he ſtiles, perhaps juſtly, the beſt and greateſt of our monarchs; applauding his equal conduct in his different ſtations of Prince of Orange and King of England: which conduct he thus repreſents. "When King James, a *Papiſt*, demanded of his ſon-in-law, with whom he was then on "good terms, his approbation of a *toleration* and *abolition of the* "*teſt*, the Stadtholder readily concurred with the ſcheme of a "*toleration*, but utterly condemned an *abolition of the teſt*. "When afterwards he became King of a free people, the *Pro-* "*teſtant* Diſſenters, likewiſe, in their turn, demanded both. "His conduct was uniformly the ſame. He gave them a *tolera-* "*tion*, but would not conſent to *aboliſh the teſt*." The only fault I find with this account is, that it is not *hiſtory*, but *fable*. The fact is, that when King James aſked the Prince's approbation of the abolition of the teſt, he meant, and the Prince underſtood him to mean, a repeal of it as to the *Papiſts*, as well as the Proteſtant Diſſenters; and it was with reſpect to the former the Prince refuſed his approbation. When afterwards he became King of England, he was ſo far from refuſing the *Proteſtant Diſſenters* the repeal of the teſt as to *them*, that he had the deſign very much at heart; he ſignified it in council, and in a ſpeech on the occaſion, earneſtly recommended it to his parliament, that, while he "doubted not they would ſufficiently provide "againſt Papiſts, they would leave room for the admiſſion of "all Proteſtants that were willing and able to ſerve:" adding, "This conjunction in my ſervice will tend to the better uniting "you amongſt yourſelves, and the ſtrengthening you againſt "your common adverſaries." And accordingly, when a clauſe for repealing the teſt as to Proteſtant Diſſenters, which was inſerted in the bill for ſettling the oaths, was rejected; the King, being reſolved to purſue his deſign, procured another clauſe to be propoſed to be inſerted in the ſame bill, in order to qualify all perſons for places, who, within a year before or after their admiſſion into them, had received the ſacrament, either according to the uſage of the church of England, or *in any other Proteſtant congregation*: which clauſe was alſo rejected, notwithſtanding the influence of the court in its favour. See Tindal's Continuation of Rapin, vol. i. p. 120,---123. edit. 8vo. 1758. The conduct of the Prince and the King was equal and conſiſtent; but, as we have ſeen, totally different from the ideas of this author.

was by law conſidered as a member of the church, and indiſpenſably obliged to conformity): I ſay, ſhould this be

It ſhould be obſerved, that the original deſign of the teſt was, not to exclude the Proteſtant Diſſenters, but the Papiſts. See Burnet's Hiſtory of his own Times, vol. i. p. 347---352. firſt edit. It was brought in by the patriots in the reign of Charles the Second, under their apprehenſions of Popery and a popiſh ſucceſſor; and is ſtiled, an "Act for preventing dangers which "may happen from Popiſh Recuſants;" and the ſame is ſaid to be its deſign in the preamble. And when, during the debate in the Houſe of Commons, it was obſerved, that it was drawn in ſuch a manner as to comprehend the Proteſtant Diſſenters, the court-party endeavoured to avail themſelves of that circumſtance in order to defeat the bill. But the diſſenting members diſappointed them, by declaring, that they had rather confide in the juſtice and generoſity of parliament to paſs ſome future bill in their favour, than be the occaſion of retarding or defeating the ſecurity, which the preſent bill was calculated to afford to the liberties of their country. And this genuine patriotiſm facilitated the paſſing of a bill then depending in the Commons, for their relief from the penal laws; (See Grey's Parliamentary Debates, vol. ii. p. 36. 38, 83,) which being ſent up to the Lords, and coming down with ſome amendments; whilſt the Commons were debating thoſe amendments, the parliament was ſuddenly prorogued through the reſentment of the court, and the intended favour to the Diſſenters prevented. See Grey's Parliamentary Debates, vol. ii. p. 180. And when afterwards, in the year 1680, a bill in favour of the Diſſenters, repealing the 35 Eliz. c. 1. paſſed both Houſes, and lay ready for the royal aſſent, the court ventured upon a very extraordinary expedient: the clerk of the crown was ordered to convey away the bill; and, accordingly it was never afterwards to be found. Burnet, ubi ſupra, p. 494, 495.

In the ſame ſeſſion, on the 16th of December, a bill was brought into the Commons "for uniting his majeſty's Proteſt-"ant ſubjects to the church of England," (See the Journal) which repealed the declaration of aſſent and conſent, and ſome other particulars uſually objected to by the Diſſenters. See Grey's Parliamentary Debates, vol. viii p. 201. And whereas, it was apprehended this bill might not comprehend all the Diſſenters within the pale of the church, there was another bill brought in at the ſame time, "for exempting his majeſty's Pro-"teſtant ſubjects diſſenting from the church of England, from "the penalties of certain laws;" which is the title of the preſent toleration act. Both theſe bills were read a ſecond time; the

be alledged, it will come under conſideration, when we examine the nature of the *ſecurity* which the *church* derives from

the former the 21ſt, and the latter the 24th of December; and referred to the ſame committee. But though the diſpoſition of the parliament was thus favourable to the Diſſenters, it hath been aſſerted by ſome writers in favour of the Teſt, and, I believe, generally taken for granted, that the deſign was to exempt Diſſenters only from the penal laws, and not from thoſe laws which excluded them from offices. But whoever conſults the Journals will find, that on the 24th of December in the ſame ſeſſion, a bill was ordered into the Commons to repeal the Act 13 Car. 2. ſtat. 2. c. 1. entitled, "An Act for the well governing and regulating of Corporations;" which had been made on purpoſe to exclude Diſſenters from Corporation offices. On the 6th of January this bill was read a ſecond time, and referred to a ſelect Committee. And in the mean time, on the 3d of January, a bill came down from the Lords, entitled, "An Act for "diſtinguiſhing Proteſtant Diſſenters from Popiſh Recuſants." I have no doubt, that this bill was deſigned to exempt Proteſtant Diſſenters from the Teſt Act; which was profeſſedly made to prevent dangers which may happen from Popiſh Recuſants, and there are no other perſons expreſsly mentioned in the act to whom it can refer. The order of the Houſe of Lords (as I find by the Journal) to the Committee concerning Proteſtant Diſſenters, on the 29th of November, is, "that they prepare a bill for explaining ſuch laws, as were intended only againſt Popiſh Recuſants, "and are put in execution againſt Proteſtant Diſſenters, to their "great grievance;" without any direction, either then or afterwards, as far as I can find, for inſerting a clauſe to except the Teſt Act; a ſtep which ſeems to have been very requiſite, if the Teſt Act was not to be affected by this bill; for that act was exactly in the ſame predicament with the other laws againſt Popiſh Recuſants; it mentioned them only, and yet by conſtruction was capable of being extended, and accordingly was extended, to Proteſtant Diſſenters. Beſides, if the bill had been intended to have no further influence and operation than merely upon the old penal laws againſt Popiſh Recuſants, and not upon the Teſt Act, it would have been entirely needleſs; the ſecurity of the Diſſenters from thoſe laws being effectually provided for by the bill at that time depending in the Commons for exempting his majeſty's Proteſtant ſubjects, diſſenting from the church of England, from the penalties of certain laws; which, as appears from Grey's Parliamentary Debates, was deſigned to procure the Diſſenters the full liberty of their religious profeſſion, free from the moleſtation of penal laws. The bill, therefore, for diſtinguiſhing Proteſtant Diſſenters from Popiſh Recuſants, I am perſuaded, was deſigned to comprehend a virtual repeal of the

from an exclusive test. For, if this plea of publick good, as the basis of an exclusive test, does not relate to the good of the state, perhaps it may to the good of the church.

And,

Test as to Protestant Dissenters; and the rather, since, understood in this latitude, it seems a proper counterpart to the bill for the express repeal of the Corporation act, at that time depending in the Commons: and indeed the Test Act could no way be repealed, with respect to Protestant Dissenters, so properly, as by distinguishing between them and Popish Recusants; the act being designed to remain in force, with respect to the latter, against whom it was originally intended. It is, I think, remarkable, that, as far as appears, there was no division upon any one of the bills which I have mentioned. Nevertheless they were all defeated by the sudden prorogation of the parliament on the 10th of January, but four days after the last bill was sent down from the Lords; the Commons being apprized of the king's intention only time enough to pass in haste a few votes on the state of the nation; the last of which is in these words: "That it is the "opinion of this House, That the prosecution of Protestant Dis-"senters upon the penal laws, is at this time grievous to the "subject, a weakening of the Protestant interest, an encourage-"ment to Popery, and dangerous to the peace of the kingdom." The parliament was soon after dissolved by proclamation. Thus the continuance of the Test-act, to the present time, and the exclusion of Dissenters from all publick offices, is the reward they enjoy for their generous and disinterested patriotism.

It may be further observed, that this particular test, receiving the sacrament according to the rites of the church of England, as it was designed, so it was calculated, to exclude the Papists, rather than the Protestant Dissenters; for the former, it was apprehended, would not comply with the established church in this office above all others; and to increase the difficulty on their part, they were expressly required, besides the oaths of allegiance and supremacy, to renounce transubstantiation; whereas it was, at that very time, no uncommon thing for Protestant Dissenters, to receive the sacrament occasionally in the church of England, in order to express their charity towards it as a part of the church of Christ. This was the case with Mr. Baxter, Dr. Bates, and others of their leading clergymen, as well as many of their laity. Indeed, after the test was enacted, many of these altogether abstained from this practice; because they would not act upon a suspicious motive, and because they totally disapproved the use of a religious ordinance as a civil test. But this consequence of appointing the sacrament as a test, was not likely to be foreseen at the time the act was enacted. And therefore, I think, we may on the whole infer with reason, that it was not particularly levelled against the Protestant Dissenters. If it had been the

design

And, doubtleſs, it is for *her good*, in one ſenſe; namely, for her *emolument*, that her members only ſhould enjoy civil offices. But, provided this claim does not appear to be *juſt* as well as profitable, it would be an ill compliment to the church to ſuppoſe her capable of continuing and maintaining it. And where, indeed, *is the equity* of her demanding, beſides that ample proviſion which is made for her ſupport by law, and to which the whole nation contributes, an excluſion of all who are not in her communion from the opportunity of ſerving their king and country, and enjoying the honours or emoluments of ſuch ſervices? Where is the equity, I ſay, that inſtead of being ſatisfied, not merely with her own peculiar revenues, but with that ſhare of civil offices and emoluments which would fall to the members of her communion, and which undoubtedly would be by far the largeſt and moſt conſiderable, ſhe muſt poſſeſs an excluſive right to the whole? and where, in reaſon and juſtice, is her title to ſuch a monopoly? The "kingdom of Chriſt is not of this world;" and religion, much leſs any peculiar form of it, can be no foundation for a claim to all civil offices and emoluments in any country; becauſe *dominion is not founded upon grace*, nor are the *ſaints of any communion*, as ſuch, entitled to all thoſe good things, which thoſe who are poſſeſſed of dominion have to beſtow.

Theſe are principles ſo juſt and indiſputable, that ſome of the warmeſt friends of eſtabliſhments and excluſive teſts have been forced to confeſs, that they are neither of them, founded in *truth*, but in *utility*: that when a particular religion is eſtabliſhed by law, and fenced with the ſole and excluſive privilege of enjoying civil offices and emoluments; this is not done on account of its being the *true religion*,

deſign of the legiſlature, to exclude all from civil offices but thoſe who have a real affection for the conſtitution and worſhip of the church, they would doubtleſs have appointed the teſt to be, not merely once taking the ſacrament at church, but a ſtated and conſtant conformity to all its religious ſervices.

but

but the *religion of the majority*; which, as ſuch, is taken into alliance by the ſtate, and ſo eſtabliſhed and privileged for the publick good. Provided, therefore, it can be ſhewn, that this goodly fabrick no way contributes to publick utility, it cannot any longer be ſupported, but muſt fall to the ground.

As for the ſuppoſition, that it conduces to the utility of the *ſtate*, that I have already conſidered. As for the utility of the *church*, if by that be meant her profit or emolument, ſhe ſhould, as I before obſerved, inſiſt upon no gain but that which is fair and honourable, none to the prejudice of other good ſubjects, where they have a juſt and equitable claim.

But if this publick utility is underſtood to refer to the *ſecurity* and *protection*, which is apprehended to be afforded to the church, by the excluſion of all others, except the members of her own communion, from civil offices; that is a point which remains now to be conſidered: For you tell us, "that the magiſtrate is bound to *protect* the eſtabliſhed "church, by admitting none but its genuine members to "offices of truſt and emolument."

The danger of the church, and the ſtrength of that ſecurity which is afforded by a teſt-law, in caſe ſhe be in danger, hath, I think, been greatly magnified. Indeed, her danger ſeems to be a mere chimera. I am perſuaded, the church would be in no danger from the Proteſtant Diſſenters, who have very little diſpoſition to moleſt her; and would have leſs ſtill, if ſhe left them in full poſſeſſion of their civil rights. The removal of any odious mark of diſtinction, and ground of jealouſy and envy as it leaves men more at eaſe, ſo in greater good humour with themſelves and others, and very little diſpoſed to quarrel about modes of faith and modes of worſhip. That is not, indeed, at all the temper of the preſent age; nor is it likely to be ſo of their poſterity, unleſs the ſpirit of perſecution ſhould ariſe in the church or ſtate. That would ſet in motion

tion a certain ſpring and elaſticity there is in human nature, which riſes againſt oppreſſion. But in quiet and peaceable times when principles of moderation and liberty univerſally prevail, this elaſtic ſpring is wholly relaxed. And the more liberal and equitable, therefore, the temper and conduct of the church and ſtate are, towards men of different religious perſuaſions, who are good ſubjects, the leſs danger is there of moleſtation to either. An equitable diſpoſition in the church, to permit all without exception to enjoy in their full extent, their natural rights, would be a much greater ſecurity to her, than any excluſive or even penal laws. For, the principles of impartial liberty form the prevailing character of the preſent age, and are, in a manner, univerſal amongſt the Proteſtant Diſſenters. Liberty, religious liberty eſpecially, is their idol; in their attachment to which, for the moſt part, they are more tenacious, than they are in their affection to any peculiar diſtinguiſhing tenets, which divide them from the church, or from one another. And this liberty they would no more violate in others, than be eaſy to ſee it violated in themſelves *.

* Dr. Burton, (in his Commentariolus Thomæ Secker, Archiep. Cantuar. memoriæ ſacer) ſpeaking of the oppoſition which hath been made to the ſcheme of eſtabliſhing biſhops in America, exclaims, "Iniqui homines & maligni! qui libertatis, "quam ipſi ſibi arrogant effrænatam, jus aliis à ſe diſſidentibus "concedi nolunt!" I am not certain whether theſe words refer to the American Preſbyterians and Independents, or to the Engliſh Diſſenters. Perhaps the Doctor would have no great objection to our underſtanding them both of the Americans and Diſſenters; for he does not ſeem to have much complaiſance for either. However that be, I may venture to ſay of both, that ſo far from ſhowing themſelves, by their oppoſition to this ſcheme, to be the enemies, I apprehend, they have ſhown themſelves to be the friends of liberty. When they are convinced, that the ſcheme of ſending biſhops to America hath not the advancement of eccleſiaſtical power in view, and will not be prejudicial to the liberty of chriſtians of other perſuaſions; when the plan ſhall appear to be ſolely this, not only that the biſhops ſhall be inveſted with the mere powers of confirmation and ordination, and of regulating their own clergy, but ſhall be excluded, by expreſs act of parliament, or by provincial acts previouſly paſſed, and ſolemnly ratified by act of parliament, (in ſome ſuch manner as the

But if any could be found, who were diſpoſed to give the church moleſtation, while ſhe hath ſo vaſt a majority in the

the acts of ſecurity of the two churches, in the union between England and Scotland) from enjoying the leaſt degree of temporal power; (always ſuppoſing, that the ſalaries for their ſupport ſhall be drawn only from thoſe who profeſs to be of the Epiſcopal perſuaſion;) then, I apprehend, if I may judge of the Americans by what I have heard of them, and of the Diſſenters by thoſe with whom I am acquainted, they will be ſo far from oppoſing, that they will be advocates for ſuch a ſcheme. And in ſo doing they will allow others the very ſame liberty which they claim themſelves. For, though they are friends to liberty, they are enemies to temporal power in the hands of eccleſiaſtics, preſbyters as well as biſhops. Some things have dropped from the archbiſhop, in his letter to Mr. Walpole, which give ground to ſurmiſe, that the whole of what is intended, is not ſo mild and moderate as his panegyriſt ſuppoſes. "The propoſal is, "ſaith "the archbiſhop, "that the biſhops ſhall exerciſe ſuch juriſdic-"tion over the clergy of the church of England in thoſe parts, "as the late biſhop of London's commiſſaries did, or *ſuch as it* "*might be thought proper that any future commiſſaries ſhould*," (and who knows what that may be?) "if this deſign were not to "take place," p. 2. And to the queſtion, "How any perſons "can undertake to promiſe, that no additional powers ſhall "hereafter be propoſed and preſſed on the colonies, when bi-"ſhops have once been ſettled? he anſwers, "that ſtrictly ſpeak-"ing, nothing of that nature can ever be promiſed in any caſe," "p. 6. 7. And he ſaith, that there ſeems no neceſſity, that "the affair ſhould ever come into parliament; for, as the law "now ſtands, ſuffragan biſhops may be ordained with the king's "approbation; and the biſhop of London may ſend theſe, inſtead "of preſbyters, for his commiſſaries," p. 21. If the American Preſbyterians and Independents, and their friends the Diſſenters in England, are more jealous than they need be of the ſcheme of ſending biſhops to America, it is owing to the evident reluctance there is in the moſt moderate patrons of this ſcheme, to the Epiſcopal power being laid under any poſitive reſtraint or limitation, and to their expreſſing a deſire of having that matter left entirely open; as well as to the conduct of the ſociety for propagating the goſpel, who expend a great diſproportion of their revenues in countries where Chriſtianity is already in a flouriſhing condition: with what other view than to proſelyte the inhabitants to Epiſcopacy, it is difficult to ſay; they employ a great number of miſſionaries in the northern colonies, and very few comparatively in the ſouthern: I ſay the ſouthern epiſcopal provinces have been comparatively neglected, from the time that a few

preſby-

the kingdom, and especially in both Houses of Parliament, (and I cannot see, that the repeal of the test would make

presbyterian or independent ministers in New-England conformed to the church, and came to England for orders; to defray the expence of whose settlement, as missionaries in the colonies from whence they came, the society came to a RESOLUTION "to "suspend complying with any other of the many requests made "them for the supply of several vacant churches upon the continent "of America." Abstract for 1722. p 46. And from that period these colonies have been objects of peculiar attention. It is natural for this conduct to create a jealousy in the Presbyterians and Independents in those parts, of an undue spirit of incroachment in these episcopalian brethren: especially, as their missionaries are, many of them of the old *jure divino* stamp, who think Episcopacy and the uninterrupted succession, essential to the validity of religious ordinances, and to the Christian as well as the ministerial character: who declare, in the words of Bishop Beveridge, that "the apostolical line hath through all "ages been preserved entire, there having been a constant suc-"cession of such bishops——as were truly and properly success-"sors to the apostles by virtue of that apostolical imposition of "hands, which being begun by the apostles, hath been continu-"ed from one another ever since their time down to us; by "which means, the same spirit which was breathed by our Lord "into his apostles, is together with their office transmitted to "their lawful successors, the pastors and governors of our church "at this time:" (Beach's Calm and Dispassionate Vindication of the Professors of the Church of England, p. 5.) Who assert, that without this uninterrupted succession, "there can be no "ministers of Christ," p. 4. that the people's acceptance with God depends upon it, p. 8. and that "if the power was once "lost, none could renew it or begin a new succession, till Christ "was pleased to send new apostles," p. 6. and that "could this "point once be made clear, that this succession hath been inter-"rupted, it would also prove further, that Christ hath neglected to "provide for his church in a case so essential to the very being of "it, notwithstanding his having expressly promised to be ever "with it to the end of the world:——that if the succession be "once broken, and the power of ordination once lost, not all the "men on earth—not all the angels in heaven, without an imme-"diate commission from Christ, can restore it." Dr. T. B. Chandler's Appeal to the public in behalf of the Church of England in America; published at New York 1767. A pamphlet now before me, wrote at the *appointment* and according to the *directions* of a CONVENTION of missionaries, to promote the design of sending bishop's to America.

Upon

make any alteration in this reſpect) the apprehenſion of danger from the Diſſenters being admitted to ſuch offices, as

Upon theſe principles it is not at all ſurpriſing to find miſſionaries aſſerting, that "not only without any authority from "God or Man, from Church or State, but in defiance of both, "were the New-England Churches firſt ſet up." Beach, p. 27. For they imagine that the Church of England is, in virtue of the act of uniformity, eſtabliſhed in the Colonies; laying it down as a maxim, that "colonies tranſplanting themſelves, carry the laws "of their mother country with them." Wetmore's Appendix to Beach's Vindication, p. 63. A very different opinion from that of Biſhop Gibſon expreſſed in a letter to Dr. Coleman, May 24, 1735, that "the religious ſtate of New-England is found-"ed in an equal liberty to all Proteſtants, none of which can "claim the name of a national eſtabliſhment, or any kind of ſu-"periority over the reſt." Agreeably to a declaration of the *Lords Juſtices*, in a letter to Governor Dunbar in the year 1725, that "there is no regular eſtabliſhment of any national or provin-"cial church in theſe plantations." Now it is but natural that miſſionaries of the principles before-mentioned ſhould declare it to be "the buſineſs they are employed in to endeavour to "proſelyte men from every ſect to the communion of the eſtab-"liſhed church." Wetmore's Vindication, p. 6. In which they do but obey a ſtanding inſtruction of the ſociety, that "they "frequently viſit their reſpective pariſhioners, thoſe of their own "communion, to keep them ſteady in the profeſſion and prac-"tice of religion, as taught in the church of England, and thoſe "that oppoſe them or diſſent from them, to convince and re-"claim them *."

I may now appeal to any man of common underſtanding, what impreſſions ſuch enormous claims advanced by the miſſionaries in the colonies, are likely to make upon their non epiſcopalian inhabitants; and whether they are not calculated to raiſe in them incurable jealouſies of the growth of epiſcopal or eccleſiaſtical power. It is very unhappy, if the ſociety, as the Archbiſhop intimates, p. 4. can procure "few to go from hence, in "the character of miſſionaries, but perſons of deſperate for-"tunes, low qualifications, and bad or doubtful characters;—"a great part of whom," ſaith he, "are Scotch; and I need not "ſay," he adds, "what chance there is, that epiſcopal clergy-"men of that country may be diſaffected to the government."

* For the quotations from Mr. Beach and Mr. Wetmore, and from Dr. Coleman's Life, I am indebted to Mr. Hobart's Second Addreſs to the Members of the Epiſcopal Separation in New-England; a pamphlet publiſhed at Boſton, 1751.

In

as a few amongſt them may be qualified for, and likely to obtain, muſt be entirely groundleſs. It is my firm opinion, that the repeal of the teſt would be a greater diſadvantage to the Body of Diſſenters, than to the eſtabliſhed church; that it would rather diminiſh than increaſe their numbers. For, in general, men are not much inclined to ſhock all the principles on which they have acted;

In what I have ſaid, I have no more deſign than the Archbiſhop had, to fix an odium on the ſociety; I wiſh both its conduct and its miſſionaries may in every reſpect be unexceptionable and honourable; and to that end, that thoſe members of it who are men of wiſdom and moderation, may be always diſpoſed to take that lead in its councils and determinations, which their numbers and influence muſt naturally give them. However, I could not, upon occaſion of this rhetorical attack of Dr. Burton, but think it very expedient juſt to point out ſome of the grounds of thoſe apprehenſions, which the ſcheme of ſending biſhops to America hath raiſed in the colonies. And I really think, in this ſtate of things, the Americans, thoſe eſpecially who are not of the Epiſcopal perſuaſion, may reaſonably expect ſome ſtrong barrier, ſome effectual ſecurity, ſuppoſing biſhops ſent to America with ſpiritual characters only, againſt their aſſuming, or poſſeſſing afterwards, any degree of temporal authority. And unleſs this be done, the oppoſition of them and their friends here, to ſuch a deſign, is no proof that they are enemies to the liberties of others, but only that they are willing to preſerve their own.

What I have ſaid is on ſuppoſition, that the State interpoſes in ſending biſhops to America. But the Preſbyterians and Independents in thoſe parts apprehend, that if biſhops are ſettled among them *by the State*, it will deſtroy that *equality* which ſubſiſts, and which (notwithſtanding what Dr. Burton aſſerts to the contrary) they are willing ſhould ſubſiſt, between themſelves and the Epiſcopalians; and will give the latter a *ſuperiority* to all other denominations. They have no objection to the Epiſcopalians procuring themſelves biſhops, or perſons inveſted with a *ſpiritual power* of ordaining, confirming and ſuperintending (as Dr. Chauncy of Boſton in his controverſy with Dr. T. B. Chandler expreſsly aſſerts) provided they will be contented to ſtand upon the foot, upon which *they themſelves* ſtand, of *permiſſion* and *protection*, not of *authority*; of *toleration*, not of a *ſtate-eſtabliſhment*. And indeed, if the State do interpoſe in ſettling biſhops in America, then, as I ſaid before, all circumſtances conſidered, ſome effectual ſecurity againſt their aſſuming, or being permitted to aſſume, improper powers may in all reaſon be expected.

and

and desert a party with which they are connected, at once, on a lucrative motive; but they may be gradually softened and relaxed in their principles, by the new connections into which the possession of public offices would introduce them, by the influence of general custom, and of what is esteemed polite and fashionable, and by the example of their superiors, or of the majority; provided they are not disgusted and revolted by any ungenerous compulsion or restraint. In such circumstances, no considerable numbers, if any, would be found mad enough to embark in the dangerous enterprize of overturning an establishment, so well guarded and fenced by law, as that of the church of England, and to which the nation hath been so long accustomed. And provided, in any future time, she should be improved in her constitution, in her public forms, and in the terms of conformity to her lay and ministerial communion, there would be no human prospect, scarcely a possibility, of shaking her foundations, should any be inclined to attempt it. For, the broader the basis on which she stands, she stands the firmer. And therefore, comprehensive, not exclusive measures should, in all prudence, be adopted and pursued by those who would approve themselves her truest and best, as well as warmest friends.

If, to all these considerations, you should oppose the destruction of the ecclesiastical constitution, in the last century, by the sectaries: I beg leave to observe, that the true cause, and at bottom the only cause, of the overthrow of the church at that time, was, that her leading men and governors had been, in some cases the authors, and in others the instruments, of civil as well as ecclesiastical tyranny. Their oppressions and persecutions had been deeply felt by the puritans, who had some zeal for religion; and their slavish doctrines, and arbitrary measures, pernicious and fatal as they were to civil liberty, had given such a turn to mens minds in general, as enabled some religious zealots, in conjunction with the Scots, who insisted upon the destruction of Episcopacy before they would move to the assistance

assistance of the Parliament when their affairs were at a low ebb, to overturn the ecclesiastical constitution. But what is the inference from hence? that the permitting of the Dissenters to enjoy the common rights of good subjects, would endanger the church a second time? I think the reverse: that, as the tyranny of the church and state proved, by a strange concurrence of circumstances, the ruin of both; lenity and some degree of the same magnanimity in this case, which, you say, was discovered in the toleration, would, in this instance as well as in the former, tend to her establishment and preservation. For, as we see in fact, that every instance of it, which hath been hitherto exercised, hath had that effect; we have reason to conclude, that every further instance of it would undoubtedly have the same.

Besides, what security can be derived to the church from a man's now and then receiving the sacrament in it, for the sake of a good place? That is, I own, a mark of *his affection for the place*; but very little, I am sure, of his affection for the church; to which he may, notwithstanding a compliance obtained by a bait so alluring, be still a false friend, or a determined enemy.

And, as there are these objections to a test in general, affecting Protestant Dissenters; so there are some, I think, no inconsiderable ones, to the particular nature of the test by law appointed; namely, that leading persons to take the sacrament with wrong views, who would not otherwise do it at all, and who have no proper notions of, and right dispositions for it, it gives ground to consider it as an abuse of a sacred ordinance, which was appointed for the ends of religion only, to temporal and worldly views and purposes; and as a strong temptation to hypocrisy: and though they are criminal who do not resist it; yet, neither are they innocent, who lay the snare in their way.

I am, Sir, *&c.*

LETTER VII.

SIR,

IT will be found, I believe, that the obſervations which I have occaſionally made upon the character of the Proteſtant Diſſenters are ſtrictly juſt: that their principles are calculated to render them the firm and invariable friends of the civil conſtitution of their country. You obſerve, that "in all ages and countries "*civil and eccleſiaſtical tyranny* are mutually productive of "each other *." I think it muſt be equally true, that *religious* and *civil liberty* have a reciprocal influence in producing and ſupporting one another; and accordingly the Proteſtant Diſſenters are at leaſt as likely as any, to be warmly and ſteadily attached to both. I cannot forbear, therefore, taking notice, with ſurprize, of a paſſage in your chapter of *Præmunire*, which, notwithſtanding I have endeavoured to put the moſt favourable conſtruction upon it, I cannot reconcile to the ſuppoſition of your having any tolerable idea, what the principles are which generally prevail amongſt the Proteſtant Diſſenters. After a very extraordinary panegyrick upon the church of England, and the clergy of her perſuaſion †, of which I am not

* Comment. vol. iv. p. 103.

† "It is the glory of the church of England, you ſay, as well "as a ſtrong preſumptive argument in favour of the purity of "her faith, that ſhe hath been (as her prelates on a trying occa"ſion once expreſſed it: Addreſs to Jam. II. 1687.) in her prin"ciples and practice ever moſt unqueſtionably loyal. The cler"gy of her perſuaſion, holy in their doctrines, and unblemiſhed in "their lives and converſation, are alſo moderate in their ambition, "and entertain juſt notions of the ties of ſociety and the rights of "civil government. As in matters of faith and morality they "acknowledge

not inclined in the leaſt, to diſpute the propriety, you give us a ſtriking contraſt in theſe remarkable words: "Where-"as the principles of thoſe who differ from them, as well "in one extreme as the other, are equally and totally deſ-"tructive of thoſe ties and obligations by which all ſociety "is kept together; equally encroaching on thoſe rights, "which reaſon, and the original contract of every free "ſtate in the univerſe, have veſted in the ſovereign power; "and equally aiming at a diſtinct independent ſupremacy "of their own, where ſpiritual men and ſpiritual cauſes "are concerned *."

Popiſh

"acknowledge *no guide but the ſcriptures*, ſo, in matters of ex-"ternal polity and of private right, they derive all their title from "the civil magiſtrate; they look up to the king as their head; "to the parliament as their lawgiver; and pride themſelves in "nothing ſo juſtly, as ſo being true members of the church em-"phatically *by law* eſtabliſhed. Whereas the principles of thoſe "who differ," &c. It cannot be doubted, that a clergy ſo holy and moderate and unambitious, and ſo warmly attached to the SCRIPTURES *as their* ONLY *guide in matters of faith and morality*, and to the civil magiſtrate in reſpect to matters of external polity, will do their utmoſt to procure a reform of various particulars in their eccleſiaſtical conſtitution, diſcipline and worſhip; and eſpecially a repeal of the twentieth article, by which the CHURCH is ſaid to have *power to decree rites and ceremonies*, and *authority in matters of faith*; and likewiſe of the law, by which the *four firſt general councils*, in *conjunction* with the ſcriptures, are made judges of hereſy.

* Comment. vol. iv. p. 103. This paſſage being altered in the new edition, runs thus: "Whereas the *notions of eccleſiaſtical li-"berty* in thoſe who differ from them, as well in one extreme as "the other *(for I here only ſpeak of extremes)* are equally and "totally deſtructive." &c. What notions of eccleſiaſtical liberty the learned gentleman aſcribes to the church of Rome, I know not; unleſs by this phraſe he means that independence upon the ſtate, and that ſuperiority over it, which ſhe does indeed arrogate to her governors. But though this claim, as I have ſaid above, is inconſiſtent with the rights of civil government and the foundations of ſociety, yet the notions of eccleſiaſtical, or rather religious liberty, amongſt the proteſtant Diſſenters are eſſentially different. Liberty in their ſenſe is not a claim of power, much leſs of ſupremacy, as in the church of Rome:

Popiſh principles, undoubtedly, are one extreme to which you here allude; and, I think, diſſenting principles, at leaſt, when they are carried to their utmoſt length, muſt be the other. It is true, the examples, which you immediately produce in ſupport of this branch of your aſſertion, are of ſome enthuſiaſts both at home and abroad in the laſt century. "The dreadful effects," you ſay, "of ſuch a "religious bigotry, when actuated by erroneous principles, "even of the Proteſtant kind, are ſufficiently evident from "the hiſtory of the Anabaptiſts in Germany, the Cove-"nanters in Scotland, and that deluge of ſectaries in "England, who murdered their ſovereign, overturned the "church and monarchy, ſhook every pillar of law, juſ-"tice, and private property, and moſt devoutly eſtabliſhed "a kingdom of the ſaints in their ſtead."

The only objection I think proper to make to the ſentiment ſuggeſted in this round and warm paragraph, is, that it cannot vindicate the univerſality of your cenſure on the principles of thoſe who, among Proteſtants, differ from the church; unleſs upon ſuppoſition, that the princi-

it is on the contrary a proteſt againſt all power in matters of religion, either in themſelves or others; for they allow of no power but that of the civil magiſtrate. An obſervation, which is ſufficient to ſhew, that their notions of liberty do not interfere with any rights of ſociety or of civil government.

By the parentheſis, which the author hath inſerted, "(for I "here only ſpeak of extremes)" I ſuppoſe he means to ſuggeſt, that in this paſſage he had not the Diſſenters directly in view, but the Anabaptiſts in Germany, and the Fifth-monarchy-men in England, and the like enthuſiaſts, in the laſt century. Nevertheleſs this very parentheſis confirms the apprehenſion, that he eſteems the principles of theſe enthuſiaſts to be only the extremes of diſſenting principles; that they are the ſame in kind, though not in degree, theſe enthuſiaſts having carried them to the utmoſt length. What follows therefore in this letter, to ſhew the eſſential difference and abſolute contrariety between the principles of the Diſſenters on the one hand, and the principles of theſe Enthuſiaſts and of the Papiſts on the other, holds equally good againſt the paſſage as it is now amended, as it did in its former ſtate.

ples

ples of all Proteſtant Diſſenters are of the ſame nature and tendency with thoſe, which being carried to an extreme by the Anabaptiſts in Germany, and the Fifth-monarchy-men in England, in the laſt century, produced very extravagant conſequences. This conſtruction offers itſelf ſo readily, that, if it was not your intention to ſtigmatize the Diſſenters of the preſent age in any degree, but only ſome particular enthuſiaſts of the laſt age both at home and abroad, it might ſurely have been expected, that ſome exceptive or qualifying expreſſions ſhould have been inſerted in their favour. And after what you have ſaid of the modern Diſſenters, in your Reply to Dr. Prieſtley, I hope this will be done in future editions.

In the mean time, as I apprehend this paragraph will be underſtood to intimate, that the Diſſenters hold principles unfriendly to ſociety, and to civil government; principles which, in the extreme, have produced the moſt fatal effects, both at home and abroad; in juſtice to them, (though not in oppoſition to you, if you really do not intend this cenſure for them,) I ſhall offer a few remarks, in order to ſhow, that the principles of the Diſſenters are entirely the reverſe, both of popiſh principles, and of thoſe enthuſiaſtic principles which you mention, and can never produce the dreadful conſequences to civil government which flow from either.

The church of Rome, indeed, aſſerts her own ſupremacy over the civil power, in every country *. And accordingly

* This claim the church of Rome hath always advanced, and, wherever ſhe hath had opportunity, exerciſed; without ever in a ſingle inſtance giving it up. Since the Reformation, the times have been daily growing more unfavourable to the exerciſe of that enormous power, which formerly held the civil authority all over Europe in abſolute ſubjection and dependence. But the church, ever attentive to her favourite ſupremacy, ſtill takes every method to prevent its further depreſſion, and even to reſtore it, if poſſible, to its former glorious exaltation. With this

ly she demands an absolute submission in all her members, subversive not only of the rights of a free people, but of all the obligations of society, and the very foundations of civil polity. She claims an utter exemption of all ecclesiastical persons, and of all their rights and possessions,

worthy design, a large folio volume, in Latin, in a small type, was printed in England (without any name of place of printer) in the year 1753, (of which I have a copy now in my hands,) under the care of the Jesuits, and the impression sent to Portugal, for the use of the ecclesiastics in that kingdom. It is intitled, Opusculum-Theologico-Juridicum, de utroque Recursu; in Judicem, scilicet, competentem et incompetentem: quinque libris distinctum: in quibus agitur, in lib. 1. De Recursu ad Judicem competentem, puta ab Ecclesiastico ad Ecclesiasticum, de sæculari ad sæcularem, vel *ad Ecclesiasticum Superiorem*: in 2do verò, De eodem ad Judicem INCOMPETENTEM; puta, ab ECCLESIASTICO ad SÆCULARIA TRIBUNALIA, &c. So that, according to the doctrine which this book is intended to establish, by an infinite number of reasons and authorities (such as they are) from the decrees of Popes, of councils, of the holy office of Inquisition, and of numberless Romish canonists and casuists, the *civil* power hath NEVER any controul over the *ecclesiastical*, but the *ecclesiastical* ALWAYS over the *civil*. And even the power, assumed and exercised by the Popes in the darkest ages, of deposing emperors, kings, and all other princes and magistrates, is explicitly asserted and maintained. This work, so much adapted to promote the glory of holy church, is published under the patronage of the King of Kings: Sub *Regis Regum* patrocinio, omnibus Regibus, Principibus, ac Judicibus, tum Ecclesiasticis, tum Sæcularibus, dicatum. The author the bishop of *Algarve*: Autore Excellentissimo ac Reverendissimo D. Ignatio à S. Teresia Portucalensi, Excanonico Regulari S. Augustini Congregationis S. Crucis Collimbriensis, Archiepiscopo Goano, Primate Orientis, Indiani Status semel, et iterum, Sæculari Ex-gubernatore: Postea vero Ecclesiæ Algarbiensis Episcopo, et ejusdem Regni Armorum Gubernatore. It is a performance calculated to free the votaries of Rome not only from the obligations of civil but of *divine* authority; furnishing such distinctions, evasions, and decisions, with regard to the most FLAGITIOUS and even UNNATURAL crimes, as amply instruct men how to commit them, *salvâ conscientiâ*. Is not this astonishing, in modern times, in a man of letters, and, as I have been informed, polite and conversible?

Tantum RELLIGIO potuit suadere malorum!

from

from the jurisdiction and authority of the magistrate. But is there the least similarity to this, in the sentiments of the Protestant Dissenters? No, certainly. It is their opinion, I own, that the magistrate should not expect, much less exact, obedience or submission in matters purely religious; and that, in things pertaining to conscience, it is the duty of the subject to act upon the principle of the apostles and primitive Christians; that is, to "obey God rather than men *." But then there is nothing in this sentiment, in the smallest degree, inconsistent with *civil obedience*: "rendering unto God the things "which are God's," is no objection to "rendering unto "Cæsar the things which are Cæsar's †." The Dissenters are so far from setting up the supposed interests of religion, or, as you express it, "spiritual men," or "spiritual causes," against lawful magistracy, or the peace and good order of society, that they allow of the exemption of none from the authority of the civil magistrate; holding all to be equally under his jurisdiction; and that no plea of sacred character, or of religion and conscience, is to be admitted in bar to his procedure, in matters of a criminal, or merely civil nature. And as, in their opinion, it is his duty to *protect* all *good subjects* in the profession of their religious principles; so, without any regard to their religious principles or professions, he is to *punish* all *offenders* against the *peace* of society. Now, how is this "setting up an independent "supremacy of their own, where spiritual men and spi-"ritual causes are concerned?" If, as they say, all men are to judge for themselves, and act accordingly, in matters of faith and worship, and the salvation of their souls; if, in these respects, they are not to controul, usurp upon, and domineer over one another, and are at the same time to be *subject to the civil magistrate*; this appears to me to be so far from setting up an *imperium in imperio*, that it leaves no *imperium*, no supremacy, indeed, *no power at all*, in society, *but that* of the civil magistrate. These principles, therefore, can never issue in a distinct indepen-

* Acts v. 29. † Matth. xxii. 21.

dent ſupremacy of thoſe who profeſs them, whether *ſpiritual men* or others. The principles of the Papiſts, indeed, directly lead to and ſupport this ſupremacy: the principles of the Diſſenters are diametrically oppoſed to it.

And as their principles are quite of another nature, another genius and complexion, than thoſe of the Papiſts; ſo are they, than thoſe of the enthuſiaſts whom you have mentioned. I know no Diſſenter on earth who holds, that *dominion is founded in grace*, and that *the ſaints muſt rule the world*; or any principles which have the leaſt tendency and aſpect towards ſuch a concluſion. On the contrary, they all to a man aſſert, that religion is ſo far from veſting in its profeſſors a title to *dominion*, that it is no exemption from *civil ſubjection*. It is in matters of conſcience only, they apprehend, they are alone accountable to God; and that not ſo as to excuſe thereby any criminal overt acts, inconſiſtent with the peace of ſociety: *theſe* the magiſtrate muſt puniſh, from whatever principle they proceed, from any or none, and whatever plea of that ſort is offered in their favour. Some enthuſiaſts formerly, particularly thoſe you have cenſured, made one compoſition of religion and politics; the Diſſenters, on the contrary, keep them wholly diſtinct, as being of a different nature, and relating to different purpoſes, and different intereſts; the one to the ſoul, the other to the body; the one to the preſent world, the other to the future. Theſe enthuſiaſts were ſtrenuous aſſertors of the monarchy of King Jeſus, that his kingdom was of this world: the Diſſenters zealouſly maintain, in conformity with reaſon and ſcripture, that "Chriſt's kingdom is not of this "world *," and doth not at all interfere with the office of the magiſtrate; who in their opinion, is ſupreme over all perſons within his dominions, of whatever religion, of any or none. I will venture to affirm, that it is impoſſible to erect the ſyſtem of theſe enthuſiaſts, as a ſuperſtructure, on the principles of the Diſſenters, as a foundation. The principles of the latter are totally incompatible

* John xviii. 36.

with

with the whole ſcheme of the former, and of all others, moſt effectually overturn and deſtroy it. In a word, their principles, with reſpect both to church authority and to civil government, are preciſely the ſame which the late Biſhop Hoadly advanced, and ſupported in an unanſwerable manner; doing thereby ſuch ſervice to the cauſe of true Proteſtantiſm, and of the royal ſucceſſion in the Houſe of Hanover, as will always be remembered with gratitude by the true friends of that auguſt family, and of the liberty of their country.

I ſhall only add, in juſtice to Dr. Prieſtley, whom you call a willing critic, (I ſuppoſe, you mean one inclined to put not the moſt favourable conſtruction upon your expreſſions) that, I believe, every Diſſenter, I am ſure, every one with whom I have converſed, who had read that page in your Commentaries, which contains a compariſon between the principles and the conduct of the Papiſts and the Sectaries, underſtood you, in the moſt obnoxious paſſage of all, in the ſame ſenſe in which he did; namely, as referring to the modern Diſſenters; and were perhaps as much offended with it as he was: I refer to that clauſe, wherein you ſay, "As to the Papiſts, their tenets are "undoubtedly calculated for the introduction of all ſlave-"ry, both civil and religious; but it may with juſtice be "queſtioned, whether the ſpirit, the doctrines, and the "practice of the Sectaries ARE better calculated to make "men good ſubjects *."

I ſhall not ſcruple to affirm, that there are no better ſubjects, and no better friends to the conſtitution of their country as a limited monarchy, defined and improved by the glorious Revolution, than the Proteſtant Diſſenters †: they

* Comment. vol. iv. p. 52.

† "The Diſſenters are ſincere well-wiſhers to the civil part of "our preſent happy eſtabliſhment; and they are to be eſteemed "and

they pray for the continuance of the Proteſtant ſucceſſion in the preſent illuſtrious royal family, and for the *ſalus regis et populi*, in the words, and with the fervour, with which father Paul prayed for the Republick of Venice in his dying moments: ESTO PERPETUA!

" and loved for it," ſaith the late Abp. Secker, in his letter to Mr. Walpole concerning biſhops in America, p. 24, 25. Dr. Burton, the Archbiſhop's panegyriſt (in his Commentariolus Thomæ Secker, &c. p. 27.) hath given a different character of certain perſons, whom he ſtiles, " Diſſentientium greges quidam." After mentioning the Archbiſhop's ſcheme of ſending biſhops to America, he adds: fremunt tamen illico et tumultuantur *Diſſentientium greges quidam* irritabiles et pervicaces; iidem in Republicâ Cives ſeditioſi, in Eccleſiâ Principatum adepti, Tyranni intolerabiles. Whether the author levels this invective againſt the Preſbyterians and Independents in the colonies, or the Diſſenters at home, I will not be poſitive. If he means the Americans, they perhaps would tell him, that he hath groſsly miſrepreſented both their civil and their religious principles, and would excuſe him on the ſcore only of that noble privilege, which Atticus allows all rhetoricians: Conceſſum eſt rhetoribus mentiri in hiſtoriis, ut aliquid dicere poſſint argutius. Cicero de claris oratoribus, c. 11. But if he means the Diſſenters, I am content to aſcribe it ſolely to his total ignorance of their character; otherwiſe he would know, that eccleſiaſtical authority, and much more eccleſiaſtical tyranny, in the hands of either preſbyters or biſhops, is their entire averſion. As for ſedition, that charge, I think, is unjuſt even againſt their anceſtors the puritans; who, in general, were not a whit more ſeditious, or more enemies to limited monarchy and lawful authority, than thoſe great patriots of the church of England, who at that time oppoſed the deſigns of an arbitrary court, and the dangerous incroachments of prerogative upon civil liberty. And as to their deſcendants, the modern Diſſenters, let his oracle the Archbiſhop be their compurgator; who had reaſon to know them better than his panegyriſt, as he was not only born of diſſenting parents, but received his education, together with the late excellent Biſhop Butler, in one of their academies, under a tutor (ONE Mr. Jones, as he is called in the late review of his Grace's life and character, p. 2.) whoſe great learning and abilities would have been no little honour to either of our univerſities: Circumſtances, by the way, which this gentleman, in his great ingenuity and liberality of ſentiment, hath thought proper to paſs over in ſilence; whether, becauſe he imagined, they would be a diſgrace to the Archbiſhop, or an honour to the Diſſenters, or both, I pretend not to determine.

But

But I have done: you have promiſed to correct thoſe paſſages in your next edition; and I have no doubt, you will make that correction in ſuch a manner as will be entirely ſatisfactory *.

In thus addreſſing you, Sir, I would not be thought to entertain a fondneſs for controverſy. I know full well, how ſeldom it is, that controverſies anſwer any valuable end. They often ſour and imbitter men's minds, and give a keenneſs and acrimony to their tempers; beſides engroſſing a great deal of time and attention, which moſt men may employ to much better purpoſes. I am ſo convinced of this, that nothing ſhould have engaged me to appear in the character of a polemical writer, even ſo far as I have now done, in laying before you, and the publick, the preceding remarks, if I had not been fully perſuaded, that ſome poſitions and ſentiments which you have advanced, have an unfavourable aſpect (and the more ſo as coming from an author of your diſtinguiſhed reputation) on the glorious cauſe of religious liberty: a cauſe nearly connected with, and of great importance to, the intereſts of truth and the preſent and future happineſs of mankind.

Thus, Sir, have I freely, and I hope, inoffenſively, pointed out ſome of the *ſuppoſed* blemiſhes in your otherwiſe excellent and elaborate work; which many, who have a great opinion both of the author and of his performance, wiſh to ſee corrected. And, I am perſuaded, they will be ſo, as far as you ſhall be convinced they are *real* blemiſhes: Whether they are or not, muſt be left, Sir, to your conſideration, and to the judgment of the impartial publick.

I am,

with great reſpect, *&c.*

PHILIP FURNEAUX.

* The author hath left them out in the laſt edition of the Commentaries. A degree of candor, worthy not only of applauſe, but of imitation!

APPENDIX:

CONTAINING

AUTHENTIC COPIES

OF

The ARGUMENT of the late Honourable Mr. Juſtice FOSTER in the Court of the Judges Delegates,

AND OF

The SPEECH of the Right Honourable Lord MANSFIELD in the Houſe of Lords, in the Cauſe between the City of London and the Diſſenters.

ADVERTISEMENT.

IT is proper the reader ſhould be apprized, previous to the peruſal of the following argument and ſpeech, that in the year 1748, the Corporation of London made a by-law, with a view, as they alledged, of procuring fit and able perſons to ſerve the office of ſheriff of the ſaid Corporation; impoſing for that end a fine of four hundred pounds and twenty marks upon every perſon who, being nominated by the Lord Mayor, declined ſtanding the election of the Common-hall; and ſix hundred pounds upon every one who, being elected by the Common-hall, refuſed to ſerve the office. Which fines they appropriated to defraying the expence of building the Manſion-houſe.

Many Diſſenters were nominated and elected to the ſaid office, who were incapable of ſerving; it having been enacted by the Corporation-act (13 Car. II. ſtat. 2. c. 1.) that no perſon ſhould be elected into any Corporation-offices, who had not taken the ſacrament in the church of England within a year preceding the time of ſuch election; and ſeveral of them, accordingly, paid their fines, to the amount of above fifteen thouſand pounds. Some at length refuſed to pay their fines, apprehending they could not be obliged, by law, to fine for not ſerving an office to which they were, by law, uneligible. The city, therefore, brought actions of debt againſt them in a court of their own, called the Sheriffs Court, for the recovery

of

of thoſe fines. After many delays the cauſe came to a hearing in the caſe of Allen Evans, Eſq; and judgment was given for the Plaintiff in September 1757. The Defendant Evans brought the cauſe before the Court of Huſtings, another city-court, to which an appeal lay; and the judgment was there affirmed by the Recorder in the year 1759. The Defendant then, by writ of error brought the cauſe before the Court of Judges Delegates, called the Court of St. Martin's: the delegates were Lord Chief Juſtice Willes, Lord Chief Baron Parker, Mr. Juſtice Foſter, Mr. Juſtice Bathurſt, and Mr. Juſtice Wilmot. Lord Chief Juſtice Willes dying before judgment given, the reſt of the delegates delivered their opinions ſeriatim, July 5, 1762, and unanimouſly reverſed the judgment of the Sheriff's Court and Court of Huſtings. On this occaſion the following excellent argument of Mr. Juſtice Foſter was delivered. The Corporation then by writ of error brought the cauſe before the Houſe of Lords, when all the judges, who had not ſat as delegates, except Mr. Juſtice Yates who was ill, gave their opinions ſeriatim, Feb. 3d and 4th, 1767, upon a queſtion put to them by the Houſe. After which Lord Mansfield in his place as a peer, made the juſtly-admired ſpeech, which is here publiſhed; concluding it with moving, that the judgment be affirmed; which was done immediately without any debate, or a diſſentient voice.

This was a cauſe of great expectation; it was intereſting to the Diſſenters not only in London, but in every Corporation in the kingdom; ſince they might, any of them, follow the ſteps of the city of London; make a by-law to fine thoſe who refuſed to ſerve Corporation-offices, under pretence of procuring fit and able perſons; and then chooſe Diſſenters who had not taken the ſacrament at church within a year preceding the time of ſuch election, to any number they thought proper; who, provided the city of London had ſucceeded in this leading cauſe, would have had the alternative, of ſubjecting themſelves

ſelves to a proſecution and to heavy penalties, if they ſerved the office under the incapacity incurred by the Corporation-act; or of paying their fines, to any amount the Corporation ſhould think fit to impoſe.

In the argument upon this cauſe, the extent and influence of the Act of Toleration, and whether it aboliſhed the crime as well as the penalties of nonconformity, came under conſideration: which is directly in point to the ſubject of my firſt letter.

I have had an opportunity of peruſing copies, taken in court, of the arguments of Mr. Juſtice (now Lord Chief Juſtice) Wilmot, Mr. Juſtice Bathurſt, and Lord Chief Baron Parker; who, together with Mr. Juſtice Foſter, compoſed the Court of Judges Delegates. Their reſpective arguments contain very judicious and pertinent obſervations and cogent reaſonings, in ſupport of the unanimous judgment given for the Defendant; and they all aſſert the influence and operation of the Toleration-act in the extent in which I have pleaded for it, as removing the crime as well as penalties of nonconformity. Mr. Juſtice Wilmot ſays, "It hath taken away both the reatum et "pœnam:" and "that it is no greater offence in the De-"fendant not to have received the ſacrament according to "the rites of the church of England, than it is not to be "worth fifteen thouſand pounds:" the qualification for the office of ſheriff. Mr. Juſtice Bathurſt ſays, "The "Defendant's diſability was occaſioned by a voluntary "omiſſion, but not default, unleſs it was his duty to re-"ceive the ſacrament." And, "if the Defendant is not "by any law obliged to receive the ſacrament annually, he "is guilty of no default in omitting to do it. Here the "Defendant, by bringing himſelf within the toleration-"act, ſhews it was not his duty to receive the ſacrament." And whereas it was objected, "That this averment of "Mr. Evans, that he could not take the ſacrament ac-"cording to the rites of the church of England, could not

"avail

"avail him: that it could only be known to the Searcher "of all hearts, and the contrary could not be proved;" Lord Chief Baron Parker replies, that "Lord Chief "Juſtice Holt in Larwood's caſe was of a different opini- "on; the plea was diſallowed for want of that averment. "The contrary may be proved, by his having accepted "a profitable office requiring that qualification, or by "other circumſtances, ſhewing that he really had no "ſuch ſcruples. But if no evidence can be given of that "inſincerity, he *ought to be, and is excuſed by law*." But though theſe learned judges all agreed in the opinion concerning the toleration-act, that it aboliſhed the crime of nonconformity as well as the penalty; yet none of them gave their reaſons for it ſo fully as Mr. Juſtice Foſter: on which account his Argument is more appoſite to my particular purpoſe than that of any other of the Judges Delegates. And beſides arguing this point in a very convincing manner, he hath likewiſe given a maſterly expoſition of the 12th ſection of the Corporation-act, in which Lord Chief Baron Parker declared his concurrence with him: and on theſe two points the merits of the cauſe principally depended.

When the Judges delivered their opinions in the Houſe of Lords, they were naturally led, by the wording of the queſtion which the Houſe put to them on the motion of Lord Mansfield, into a particular conſideration of the meaning of the Toleration act; and the ſubſtance of what was then ſaid (together with ſome excellent obſervations and reaſonings which were peculiar to himſelf) may be ſeen to very great advantage in the Speech of that Noble Lord which is here preſented to the world.

There is one remark which it may be proper to make, that whereas in Larwood's caſe, the Court of King's Bench would not admit his allegation that he was a Diſſenter, becauſe it was made in his rejoinder, and not in

his plea; ſo that his rejoinder was a departure from his plea; and the Court could not take notice of the Toleration-act unleſs it was pleaded, becauſe it was a *private* ſtatute: one of the learned Judges in the Houſe of Lords, obſerving upon this, declared his opinion, that the Court determined wrong in Larwood's caſe, the Toleration-act not being a private, but a *publick* ſtatute. And for this he aſſigned the following reaſons: that there is no diſtinction between a publick and a private ſtatute in point of authority, but only of notoriety and univerſality. Now the Diſſenters were a body of people well known in the kingdom, and even mentioned in ſeveral acts of parliament, and had publick ſtatutes enacted againſt them before the Toleration-act, which were repealed by that act; and therefore it ſhould in all reaſon be conſidered as a publick act: Eſpecially, as in reality it virtually affects all perſons in the kingdom, ſetting them at liberty, and giving them a legal right to become Nonconformiſts, if they are ſo diſpoſed. And the preamble to the act mentions another conſideration as the deſign of the legiſlature in paſſing it, which is of the moſt publick nature, and of univerſal influence: It ſaith, "Foraſmuch as ſome eaſe to ſcrupulous "conſciences in the exerciſe of religion, may be an effec-"tual means to unite their Majeſties proteſtant ſubjects in "intereſt and affection: Be it enacted," &c. Now is it poſſible to conceive, that an act, which related to a body of people at that time ſo well known as the Diſſenters, which repealed ſeveral publick ſtatutes, which gives liberty of diſſent to every one who chooſes to avail himſelf of it; and which was deſigned to unite all proteſtant ſubjects in intereſt and affection; is it poſſible to conceive, that this can be a private act? If ſo, by what criterion can we diſtinguiſh between private acts and publick ones? But to return:

The authenticity of the copy, here publiſhed, of the argument of that upright and able lawyer, the late Mr. Juſtice

Juſtice Foſter, will appear from the following letter of his worthy Nephew: and whatever be the defects of my own performance, to which that gentleman is very partial; and of how little advantage ſoever the publication of it may be to the world, I reckon it no inconſiderable one to myſelf, that it hath procured me the acquaintance and friendſhip of Mr. Dodſon.

APPENDIX. No. I.

A Letter from MICHAEL DODSON, Esq; to the AUTHOR.

REVEREND SIR,

I Admire the letters which you have addreſſed to the Honourable Gentleman to whom the world is indebted for the celebrated Commentaries on the laws of England, and think that you have very clearly proved in the firſt letter, that ſuch of the Diſſenters as comply with the terms of the toleration-act, are not in the eye of the law guilty of any crime by reaſon of their nonconformity. But though the obſervations which you have made for this purpoſe ſeem to be abundantly ſufficient, yet I preſume that it will be agreeable to you to ſee the argument of the late Mr. Juſtice Foſter, in the cauſe between the city of London and the Diſſenters, as delivered by him at Guildhall in July 1762, when the judges delegates gave judgment for Mr. Evans the plaintiff in error; and I now ſend it to you exactly copied from his own notes, at the ſame time giving my conſent to the publication of it in an appendix to your letters.

I am, with great reſpect,
Reverend Sir,
Your moſt obedient humble ſervant,

Clifford's Inn,
Aug. 25, 1770.

MICHAEL DODSON.

Mr.

Mr. JUSTICE FOSTER's *Argument in the Caſe of* ALLEN EVANS, *Eſq; againſt Sir* THOMAS HARRISON, *Chamberlain of London.*

THE merits of the caſe will turn on the Corporation and Toleration-acts taken together. One works a diſability on the part of the plaintiff in error; the other ſhews that this diſability doth not ariſe from any criminal neglect in him. The Corporation act * prohibits the election of Nonconformiſts; the Toleration-act † renders nonconformity no longer a crime.

The intention of the legiſlature in framing the Corporation act was to exclude all Nonconformiſts from corporation offices. The preamble after a ſhort mention of the late troubles goes on and ſaith, "To the end that the ſucceſſion in ſuch corporations may be moſt probably perpetuated in the hands of perſons well-affected to his majeſty and the eſtabliſhed government——and for the preſervation of the publick peace both in church and ſtate, Be it enacted," &c.

This excluſion was to be effected two ways. The firſt was by removing all Nonconformiſts who were then in office or ſhould come into office before the 25th of March 1663. The ſecond, by providing againſt the admiſſion of them for the future.

With regard to thoſe then in office commiſſioners are appointed with extraordinary powers, powers new and unknown to the conſtitution, which nothing but the moſt

* 13 Car. II. ſtat. 2. c. 1. † 1 W. & M. ſeſſ. 1. c. 18.

 urgent

urgent neceſſity, real or imaginary, could have juſtified. For they were impowered among other things, at their will and pleaſure to remove all corporation officers *if they ſhould deem it expedient for the publick ſafety*, and at their will and pleaſure to fill up all vacancies occaſioned by ſuch removals or otherwiſe.

This commiſſion expired on the 25th of March 1663. And it is obſervable, that during this commiſſion no mention is made of the Sacramental Qualification. The well-known zeal of the commiſſioners, men picked and choſen for the purpoſe, with regard to the excluſion of Nonconformiſts who had been rendered very odious, made an expreſs proviſion for that purpoſe needleſs as to them.

But when elections were to return into their old channel, ſubject only to charter and cuſtom, it was thought neceſſary to put electors, whoſe zeal in the cauſe might by time and a change of circumſtances be abated——it was thought neceſſary to put them under a new reſtraint; and to make this reſtraint perpetual. This is done by the 12th ſection of the act: "Provided alſo and be it enacted, that "from and after the expiration of the ſaid commiſſion, no "perſon or perſons ſhall for ever hereafter be placed, "elected or choſen in or to any the offices or places afore-"ſaid, that ſhall not have within one year next before "ſuch election or choice taken the ſacrament of the Lord's "Supper according to the rites of the church of England; "and that every ſuch perſon and perſons ſo placed, elect-"ed or choſen, ſhall likewiſe take the aforeſaid three "oaths, and ſubſcribe the ſaid declaration at the ſame "time when the oath for the due execution of the ſaid "places and offices reſpectively ſhall be adminiſtered; and "in default hereof, every ſuch placing, election and choice "is hereby enacted and declared to be void."

This clauſe conſiſts of two Branches independent and unconnected with each other. The firſt regards the perſons

ſons having the right and power of election and nomination to corporation-offices: The ſecond, the candidates alone.

The firſt is, in my opinion, prohibitory on the Electors; it lays a reſtraint upon them in the exerciſe of their ancient right and diſcretionary power in the matter of the election, and confines them to perſons conforming to the eſtabliſhment in the manner preſcribed by the act. No perſon not previouſly qualified as the act directs, ſhall for ever hereafter be elected. What is this but ſaying, That no corporation having the right of election ſhall for ever hereafter elect any perſon not ſo previouſly qualified?

The ſecond Branch of the clauſe regards only the candidate, and upon a ſuppoſition that he may have been eligible and actually elected, requires ſomething further to be done by him, the taking and ſubſcribing the three oaths and declaration; and in default hereof declares the election void.

I therefore do not found my opinion on this branch of the ſtatute, but on that which prohibits the election of perſons not previouſly qualified. For in true grammar and plain conſtruction, what is the meaning of the words, *in default hereof the election ſhall be void?* In default of what? Plainly in default of ſomething required by the act to be done by the candidate after his election; not in default of what this act doth not require of him.

I ſay what *this* act doth not require; for though it ſhould be admitted that the Rubrick did injoin conformity in the inſtances therein mentioned, yet ſtill in the conſtruction of the words, *in default hereof*, as they ſtand in this clauſe, we muſt confine ourſelves to thoſe duties which *this* act alone doth require.

I return now to the firſt Branch of the clauſe. If it be prohibitory on the Electors, as I think it is, the conſequence

will be, that if they having due notice of the incapacity of the candidate, will proceed to elect a perſon declared by the ſtatute not eligible, this ſhadow of an election will be a mere nullity; as being made in contravention to the ſtatute, a contravention on the part of the electors wilful, open and undiſguiſed.

In the preſent caſe it muſt be admitted, that the electors had due notice of the incapacity of the Defendant in the action, ſince he in his plea avers it, and the Plaintiff hath not put it in iſſue.

This being ſo, it will, I think, be impoſſible to maintain that a right of action can accrue to the Corporation from a proceeding prohibited by the ſtatute, and conſequently null and void from the beginning.

In the caſe of the Mayor of Guildford againſt Clarke * the Court held, "That to make a default in the De-"fendant there muſt have been an election antecedent; "and that the election of ſuch an one as the Defendant *is* "*abſolutely prohibited by the ſtatute.*"

Thus the caſe ſtands with regard to the Corporation.

On the other hand, what is the caſe of the Defendant? he is now called upon under a penalty to uſurp an office upon the Crown, which uſurpation will ſubject him to a criminal proſecution and to a heavy puniſhment. Strange dilemma this! You ſhall, ſaith the Plaintiff in the action, uſurp upon the crown, or forfeit the penalties of the By-law. Can the By-law purge the uſurpation? It cannot. And can it at the ſame time oblige the Defendant, conſcious of his own incapacity, and apprized of the danger of the uſurpation, to venture on it? I think not.

* 2 Vent. 247, 248.

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It hath been ſaid, that all corporations have a right to the ſervice of their members. They certainly have this right under proper limitations, but ſtill it is a right ſubject to the controul of the legiſlature, and in the matter of the election they muſt ſubmit to ſuch regulations and reſtraints as the ſtatute hath laid on them.

It hath been ſaid, Shall perſons who live in open contempt of all Goſpel inſtitutions ſhelter themſelves under this Act? It is ſufficient at preſent to ſay, that their caſe was not in the contemplation of the legiſlature at the time this Act was made, and conſequently the Act cannot be extended to them. The Act was plainly levelled at perſons of a quite different character; I mean the Proteſtant Nonconformiſts.

Beſides, the Defendant doth not take ſhelter under the idle excuſe which the objection puts into the mouths of Debauchees and Unbelievers; but having pleaded the Toleration-act, which will be conſidered in its proper place, he avers, that he doth not live in the neglect of Goſpel Ordinances, though he entertains ſome ſcruples touching the mode of adminiſtration in the Eſtabliſhed Church; and he hopes the Act of Toleration hath diſpenſed with conformity in that reſpect.

A great deal hath been ſaid touching the diſtinction between Acts and Proceedings, void in themſelves and only voidable; and touching the conſtruction of Statutes declaring certain proceedings void.

The anſwer I ſhall at preſent give to what hath been ſaid on that head is, that the point now in queſtion will not turn on that branch of the ſtatute which declares the election void, but upon that which abſolutely prohibits it, and conſequently renders it a mere Nullity. If I am right in this, nothing that hath been urged upon the

head

head of *void* and *voidable* will be applicable to the preſent caſe.

It hath been ſaid, that the conſtruction now contended for is over-partial to Diſſenters, it excuſeth them from offices of Burden. But doth it not at the ſame time exclude them from all offices attended with Honour and profit? And it would ſound extremely harſh to ſay, that the ſame law which, for the reaſons given in the preamble, excludes them from the one, *as perſons unworthy of public truſt*, hath ſtill left them liable to the other, be the truſt that attends the office what it may. The Shrievalty is indeed an office of burden, but we all know that it is likewiſe an office of great importance and ſignal truſt.

It was ſaid in Larwood's caſe *, and I believe it had great weight with thoſe Judges who thought him liable to ſerve the office, that no man can by his own plea diſable himſelf, or excuſe one fault by another.

It is ſufficient on the preſent occaſion to ſay, that Larwood's caſe totally and ſubſtantially differs from the preſent. Larwood had not properly pleaded the Toleration-act, and therefore could not take advantage of it. The preſent Defendant hath properly pleaded it, and ſhewn himſelf intitled to the benefit of it.

And he doth not plead it in order to excuſe one fault by another, but in order to ſhew that the Rubrick, which requires all perſons to communicate with the Eſtabliſhed Church three times at leaſt in the year, is not now obligatory on him. The Toleration-Act, he ſaith, hath taken away the force and effect of the Rubrick, with regard to him. Whether it hath or hath not done this remains to be conſidered. And I am clearly of opinion with my Brothers who have ſpoken before me, that it hath.

* Reported in 4 Mod. 269. 12 Mod. 67. 1 Ld. Raym. 29. Salk. 167. and other books.

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This opinion I ground not barely on ſome particular branches of the Act, but likewiſe on the Spirit and general Frame and Tenour of it.

It is not to be conſidered merely as an act of connivance and exemption from the penalties of former laws; it doth, in my opinion, declare the public worſhip among Proteſtant Diſſenters to be warranted by Law, and intitled to the public Protection.

It no leſs than four times, upon different occaſions, ſpeaks of the religious worſhip practiſed among them as a mode of worſhip *permitted and allowed* by that Act. What is this but ſaying, that it was warranted by Law? The magiſtrate may ſometimes connive where he cannot puniſh or reform? but what the Legiſlature permits, allows and takes under its protection, ceaſeth from that moment to be an offence.

When it enforceth former laws made for obliging all perſons to reſort to divine ſervice on the Lord's Day, the attendance upon divine worſhip among the Diſſenters is made equivalent to their attendance at the Churches eſtabliſhed by Law.

With regard to the ſpecial penalties inflicted by the Act upon perſons maliciouſly and contemptuouſly diſturbing public worſhip, the places for religious worſhip among Proteſtant Diſſenters are expreſly put upon a level with Cathedrals, Pariſh-Churches, and Chapels. I ſay, with regard to the ſpecial penalties of this Act, they are put upon a level. For though perſons diſturbing the public worſhip in the Eſtabliſhed Church may be liable to proſecutions of another kind, yet with regard to the penalties inflicted by this act, diſſenting meeting-houſes and pariſh churches ſtand upon the ſame foot.

And perſons officiating as Teachers or Preachers in their congregations are exempted from ſerving on Juries and executing

executing public offices in as full a manner, and I preſume upon the ſame principles, as the eſtabliſhed Clergy are exempted by the common law.

Beſides, let the Toleration-act be conſidered barely as exempting Proteſtant Diſſenters from the penalties of all former laws inflicted *ſingly* on account of their nonconformity. In this light at leaſt it muſt be conſidered. And conſidered in this light, it will be very difficult to conceive that the Legiſlature intended to leave them ſtill open to eccleſiaſtical cenſures for not complying with this Rubrick.

Thus much I thought proper to ſay touching the general frame and apparent intention of the Toleration-act. But the point will not ſtand upon inferences and concluſions drawn from the ſpirit and frame of the Act. It expreſsly provides that they ſhall not be proſecuted in any Eccleſiaſtical Court for or by reaſon of their nonconformity to the Church of England.

It may be eaſily ſhewn that all proſecutions founded on the Rubrick were carried on in the eccleſiaſtical courts, and not elſewhere: conſequently a perſon intitled to the benefit of this Act, is not now obliged to conform to the Rubrick.

I conclude therefore that the Corporation-Act being prohibitory on the Electors, every election made in contravention to it with notice of the incapacity of the Candidate, and of his legal excuſe founded on the Toleration-act, is a mere nullity. And that the Act having diſpenſed with the Defendant's conformity to the Rubrick, the judgment againſt him muſt be reverſed.

APPEN-

APPENDIX. No. 2.

THE

SPEECH

OF THE RIGHT HONOURABLE

LORD MANSFIELD,

IN THE

House of Lords, Feb. 4, 1767.

IN THE

CAUSE between the City of LONDON and the DISSENTERS.

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Cause between the City of London and the Dissenters.

It is proper, as an Introduction to the following Speech to prefix the Question which the House of Lords put to the Judges; as also their Opinions upon it: A Question, which the Noble Lord who moved it hath worded with such precision, that it is hardly possible the point on which the Cause turns, should be mistaken on any future occasion.

EXTRACT from the JOURNALS of the HOUSE OF LORDS.

Die Jovis 22 Januarii 1767.

Chamberlain of London. *against* EVANS. } COUNCIL (according to order) were called in to be further heard in the cause upon a writ of error brought into this House, wherein the Chamberlain of the city of London is plaintiff, and Allen Evans, Esq; Defendant: And the council for the Defendant having been heard; as also one council for the Plaintiff by way of reply; the council were directed to withdraw.

And it being proposed, that the Judges be directed to deliver their opinions upon the following Question:

Q. Whether upon the facts admitted by the pleadings in this Cause, the Defendant is at liberty, or should be allowed to object to the validity of his election on account of his not having taken the sacrament according to the rites of the church of England within a year before, in bar of this action?

The same was agreed to, and the said Question was accordingly put to the Judges.

Whereupon

Whereupon the Judges desiring some time might be allowed them for that purpose;

ORDERED,

That the further hearing of the said Cause be adjourned till Tuesday next; and that the Judges do then attend to deliver their opinions upon the said Question.

Die Martis 27 *Januarii* 1767.

The Order of the day being read for the further hearing of the Cause wherein the Chamberlain of the city of London is Plaintiff, and Allen Evans, Esq; is Defendant, and for the Judges to deliver their opinions upon the Question proposed to them on Thursday last; the Lord Chancellor acquainted the House, That the Judges differed in their opinions, and that they desired, that further time might be allowed them for giving their opinions upon the said Question.

ORDERED,

That the further hearing of the said Cause be adjourned to this day sevennight; and that the Judges do then attend to deliver their opinions upon the said Question.

Die Martis 3 *Februarii* 1767.

The Order of the day being read for the further hearing of the Cause upon the writ of error, wherein the Chamberlain of the city of London is Plaintiff, and Allen Evans, Esq; is Defendant, and for the Judges to deliver their opinions upon the Question proposed to them on Thursday the 22d day of January last; the Lord Chancellar acquainted the House, That the Judges differed in their opinions; and thereupon they were directed to deliver their opinions seriatim, with their reasons.

Accordingly,

Mr. Justice Hewitt was heard, and gave his reasons, and concluded with his opinion, that the Defendant is at liberty,

liberty, and ſhould be allowed to object to the validity of his election, on account of his not having taken the ſacrament according to the rites of the church of England within a year before, in bar of this action.

Mr. Juſtice Aſton heard, and was of the ſame opinion, and gave his reaſons.

Mr. Baron Perrott heard, and gave his reaſons, and concluded with his opinion, That the Defendant is not at liberty, nor ought to be allowed to object to the validity of his election on account of his not having taken the ſacrament according to the rites of the church of England within a year before, in bar of this action.

Mr. Juſtice Gould heard, and was of the ſame opinion as Mr. Juſtice Aſton, and gave his reaſons.

ORDERED,

That the further conſideration of the ſaid Cauſe be adjourned till to-morrow; and that the Judges do then attend.

Die Mercurii 4 Februarii 1767.

The Order of the Day being read for the further hearing of the Cauſe upon the writ of error wherein the Chamberlain of the city of London is Plaintiff, and Allen Evans, Eſq; is Defendant; and for the Judges to attend.

Mr. Baron Adams was heard, and gave his reaſons, and concluded with his opinion, That the Defendant is at liberty, &c.

Mr. Baron Smythe heard, and was of the ſame opinion, and gave his reaſons.

Mr. Juſtice Clive heard, and was of the ſame opinion, and gave his reaſons.---Thus far the Journals.

As ſoon as the Judges had given their opinions, Lord Mansfield made the following Speech.

Lord MANSFIELD's *Speech in the Houſe of Lords, in the Caſe of the Chamberlain of London againſt* ALLEN EVANS, *Eſq.*

MY LORDS,

AS I made the motion for taking the opinion of the learned Judges, and propoſed the queſtion your Lordſhips have been pleaſed to put to them; it may be expected, that I ſhould make ſome further motion, in conſequence of the opinions they have delivered.

In moving for the opinion of the Judges, I had two views: The firſt was, that the Houſe might have the benefit of their aſſiſtance, in forming a right judgment in this cauſe now before us, upon this writ of error: The next was, that, the queſtion being fully diſcuſſed, the grounds of our judgment, together with their exceptions, limitations, and reſtrictions, might be clearly and certainly known; as a rule to be followed hereafter, in all future caſes of the like nature: And this determined me as to the manner of wording the queſtion, "How far the Defendant might, in the preſent caſe, be allowed to "plead his diſability in bar of the action brought againſt "him?

The queſtion, thus worded, ſhews the point upon which your Lordſhips thought this cauſe turned; and the anſwer neceſſarily fixes a criterion, under what circumſtances and by what perſons ſuch a diſability may be pleaded, as an exemption from the penalty inflicted by this by-law, upon thoſe who decline taking upon them the office of Sheriff.

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In every view in which I have been able to consider this matter, I think this action cannot be supported.

If they rely on the Corporation-act; by the literal and expreſs proviſion of that act no perſon can be elected, who hath not within a year taken the ſacrament in the Church of England; the Defendant hath not taken the ſacrament within a year: he is not therefore elected. Here they fail.

If they ground it on the general deſign of the legiſlature in paſſing the Corporation act; the deſign was to exclude Diſſenters from office, and diſable them from ſerving. For in thoſe time, when a ſpirit of intolerance prevailed, and ſevere meaſures were purſued, the Diſſenters were reputed and treated as perſons ill-affected and dangerous to the Government: The Defendant therefore, a Diſſenter, and in the eye of this law a perſon dangerous and ill-affected, is excluded from office, and diſabled from ſerving. Here they fail.

If they ground the action on their own by-law; ſince that by-law was profeſſedly made to procure fit and able perſons to ſerve the office, and the Defendant is not fit and able; being expreſsly diſabled by Statute-law; here too they fail.

If they ground it on his diſability being owing to a neglect of taking the ſacrament at church, when he ought to have done it; the Toleration-act having freed the Diſſenters from all obligation to take the ſacrament at church, the Defendant is guilty of no neglect, no criminal neglect. Here therefore they fail.

Theſe points, my Lords, will appear clear and plain.

The Corporation-act, pleaded by the Defendant as rendering him uneligible to this office, and incapable of taking it upon him, was moſt certainly intended by the

legiſlature to prohibit the perſons therein deſcribed being elected to any corporation-offices, and to diſable them from taking ſuch offices upon them. The act had two parts: Firſt it appointed a commiſſion for turning out all that were at that time in office, who would not comply with what was required as the condition of their continuance therein, and even gave a power to turn them out though they ſhould comply: and then it further enacted, that from the termination of that commiſſion no perſon hereafter who had not taken the ſacrament according to the rites of the Church of England within one year preceding the time of ſuch election, ſhould be placed, choſen, or elected, into any office of or belonging to the government of any corporation: And this was done, as it was expreſsly declared in the preamble to the act, in order to perpetuate the ſucceſſion in corporations in the hands of perſons well-affected to the government in church and ſtate.

It was not their deſign, as hath been ſaid *, "to bring "ſuch perſons into corporations by inducing them to take "the ſacrament in the Church of England;" the legiſlature did not mean to tempt perſons who were ill-affected to the government, occaſionally to conform: It was not, I ſay, their deſign to bring them in; they could not truſt them, leſt they ſhould uſe the power of their offices to diſtreſs and annoy the ſtate. And the reaſon is alledged in the act itſelf: it was becauſe there were "evil ſpirits" amongſt them; and they were afraid of evil ſpirits, and determined to keep them out: And therefore they put it out of the power of electors to chooſe ſuch perſons, and out of their power to ſerve; and accordingly preſcribed a mark or character, laid down a deſcription whereby they ſhould be known and diſtinguiſhed by their conduct previous to ſuch election; inſtead of appointing a condition of their ſerving the office, reſulting from their future conduct,

* By Mr. Baron Perrott.

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or some consequent action to be performed by them; they declared such persons incapable of being chosen, as had not taken the sacrament in the church within a year before such election; and without this mark of their affection to the church, they could not be in office, and there could be no election.

But as the law then stood, no man could have pleaded this disability, resulting from the corporation-act, in bar of such an action as is now brought against the Defendant; because this disability was owing to what was then in the eye of the law a crime; every man being required by the canon-law, received and confirmed by statute-law, to take the sacrament in the church at least once a year: The law would not permit a man to say, that he had not taken the sacrament in the Church of England; and he could not be allowed to plead it in bar of any action brought against him.

But the case is quite altered since the act of Toleration: It is now no crime for a man, who is within the description of that Act, to say he is a Dissenter; nor is it any crime for him not to take the sacrament according to the rites of the Church of England: Nay, the crime is, if he does it contrary to the dictates of his conscience.

If it is a crime not to take the sacrament at church, it must be a crime by some Law; which must be either Common or Statute-law, the Canon-law inforcing it depending wholly upon the Statute-law. Now the Statute-law is repealed as to persons capable of pleading that they are so and so qualified; and therefore the Canon-law is repealed with regard to those persons. If it is a crime by Common-law, it must be so either by Usage or Principle. There is no usage or custom independent of positive law, which makes Nonconformity a crime. The eternal principles of Natural Religion are part of the Common-law: The essential principles of Revealed Religion are part of the Common-law; so that any person reviling, subverting or ridiculing them, may be prosecuted at Common-law. But

it cannot be ſhewn from the principles of Natural or Revealed Religion, that, independent of poſitive law, temporal puniſhments ought to be inflicted for mere opinions with reſpect to particular modes of worſhip.

Perſecution for a ſincere, though erroneous conſcience, is not to be deduced from reaſon or the fitneſs of things; it can only ſtand upon poſitive law.

It hath been ſaid *, that "the Toleration-act only a-"mounts to an exemption of Proteſtant Diſſenters from "the penalties of certain laws therein particularly menti-"oned, and to nothing more; that if it had been intend-"ed to bear, and to have any operation upon the Corpo-"ration-act, the Corporation-act ought to have been "mentioned therein; and there ought to have been ſome "enacting clauſe, exempting Diſſenters from proſecution "in conſequence of this act, and enabling them to plead "their not having received the ſacrament according to the "rites of the Church of England, in bar of ſuch action." But this is much too limited and narrow a conception of the Toleration-act: which amounts conſequentially to a great deal more than this; and it hath conſequentially an influence and operation upon the Corporation-act in particular. The Toleration-act renders that which was illegal before, now legal; the Diſſenters way of worſhip is permitted and allowed by this Act; it is not only exempted from puniſhment, but rendered innocent and lawful; it is eſtabliſhed: it is put under the protection, and is not merely under the connivance, of the law. In caſe thoſe who are appointed by law to regiſter Diſſenting places of worſhip, refuſe on any pretence to do it, we muſt, upon application, ſend a Mandamus to compel them.

Now there cannot be a plainer poſition, than that the Law protects nothing, in that very reſpect in which it is

* Mr. Baron Perrott,

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in the eye of the law, at the ſame time, a crime. Diſſenters within the deſcription of the Toleration-act, are reſtored to a legal conſideration and capacity; and an hundred conſequences will from thence follow, which are not mentioned in the Act. For inſtance, previous to the Toleration-act, it was unlawful to deviſe any legacy for the ſupport of Diſſenting Congregations, or for the benefit of Diſſenting Miniſters; for the Law knew no ſuch aſſemblies, and no ſuch perſons; and ſuch a deviſe was abſolutely void, being left to what the law called ſuperſtitious purpoſes. But will it be ſaid in any Court in England, that ſuch a deviſe is not a good and valid one now? And yet there is nothing ſaid of this in the Toleration-act. By that Act the Diſſenters are freed, not only from the pains and penalties of the Laws therein particularly ſpecified, but from all eccleſiaſtical cenſures, and from all penalty and puniſhment whatſoever on account of their Nonconformity; which is allowed and protected by this act, and is therefore in the eye of the law no longer a crime. Now if the Defendant may ſay he is a Diſſenter; if the Law doth not ſtop his mouth; if he may declare, that he hath not taken the ſacrament according to the rites of the Church of England without being conſidered as criminal; if, I ſay, his mouth is not ſtopped by the Law, he may then plead his not having taken the ſacrament according to the rites of the Church of England, in bar of this action. It is ſuch a diſability as doth not leave him liable to any action, or to any penalty or puniſhment whatſoever.

It is indeed ſaid * to be "a maxim in law, That a man "ſhall not be allowed to diſable himſelf." But when this maxim is applied to the preſent caſe, it is laid down in too large a ſenſe; I ſay, when it is extended to comprehend a legal diſability, it is taken in too great a latitude. What! ſhall not a man be allowed to plead, that he is not fit and able? Theſe words are inſerted in the By-Law,

* Mr. Baron Perrott.

as the ground of making it; and in the Plaintiff's declaration, as the ground of his action againſt the Defendant: it is alledged, that the Defendant was fit and able, and that he refuſed to ſerve not having a reaſonable excuſe. It is certain, and it is hereby in effect admitted, that if he is not fit and able, and that if he hath a reaſonable excuſe, he may plead it in bar of this action. Surely he might plead, that he was not worth fifteen thouſand pounds, provided that was really the caſe, as a circumſtance that would render him not fit and able. And if the law allows him to ſay, that he hath not taken the ſacrament according to the rites of the Church of England, being within the deſcription of the Toleration act; he may plead that likewiſe, to ſhew that he is not fit and able: It is a reaſonable, it is a lawful excuſe.

My Lords, the meaning of this maxim, "That a "man ſhall not diſable himſelf," is ſolely this, That a man ſhall not diſable himſelf by his own wilful crime: And ſuch a diſability the law will not allow him to plead. If a man contracts to ſell an eſtate to any perſon upon certain terms at ſuch a time, and in the mean time he ſells it to another; he ſhall not be allowed to ſay, Sir, I cannot fulfil my contract; it is out of my power; I have ſold my eſtate to another. Such a plea would be no bar to an action, becauſe the act of his ſelling it to another is the very breach of contract. So likewiſe a man, who hath promiſed marriage to one lady, and afterwards marries another, cannot plead in bar of a proſecution from the firſt lady, that he is already married; becauſe his marrying the ſecond lady is the very breach of promiſe to the firſt. A man ſhall not be allowed to plead, that he was drunk, in bar of a criminal proſecution, though perhaps he was at the time as incapable of the exerciſe of reaſon as if he had been inſane; becauſe his drunkenneſs was itſelf a crime: he ſhall not be allowed to excuſe one crime by another. The Roman ſoldier, who cut off his thumbs, was not ſuffered to plead his diſability for the ſervice, to procure his diſmiſſion with impunity; becauſe his incapacity was deſignedly brought on him by his own wilful fault. And I am glad

glad to observe so good an agreement among the Judges upon this point, who have stated it with great precision and clearness.

When it was said * therefore, That "a man cannot "plead his crime, in excuse for not doing what he is by "law required to do;" it only amounts to this, That he cannot plead in excuse what, when pleaded, is no excuse: but there is not in this the shadow of an objection to his pleading what is an excuse, pleading a legal disqualification. If he is nominated to be a Justice of the Peace, he may say, I cannot be a Justice of Peace, for I have not an hundred pounds a year. In like manner a Dissenter may plead, I have not qualified, and I cannot qualify, and am not obliged to qualify; and you have no right to fine me for not serving.

It hath been said †, That "the King hath a right to "the service of all his subjects." And this assertion is very true, provided it be properly qualified. For surely, against the operation of this general right in particular cases, a man may plead a Natural or Civil disability. May not a man plead, that he was upon the high-seas? May not idiocy or lunacy be pleaded? which are Natural disabilities: Or a judgment of a court of law? and much more, a judgment of Parliament? which are Civil disabilities.

It hath been said ‡ to be "a maxim, that no man can "plead his being a lunatic, to avoid a deed executed, or "excuse an act done, at that time; because," it is said, "if he was a lunatic, he could not remember any action "he did during the period of his insanity." And this was doctrine formerly laid down by some Judges; but I am glad to find, that of late it hath been generally exploded; for the reason assigned for it is, in my opinion, wholly insufficient to support it; because, though he could not re-

* Mr. Baron Perrot. † Mr. Baron Perrot. ‡ Mr. Baron Perrot.

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member what paſſed during his inſanity, yet he might juſtly ſay, If he ever executed ſuch a deed, or did ſuch an action, it muſt have been during his confinement or lunacy; for he did not do it either before or ſince that time.

As to the caſe, in which a man's plea of inſanity was actually ſet aſide; it was nothing more than this: It was when they pleaded *ore tenus*; the man pleaded that he was at the time out of his ſenſes. It was replied, How do you know that you was out of your ſenſes? No man that is ſo, knows himſelf to be ſo. And accordingly his plea was upon this quibble ſet aſide; not becauſe it was not a valid one, if he was out of his ſenſes; but becauſe they concluded, he was not out of his ſenſes. If he had alledged, that he was at that time confined, being apprehended to be out of his ſenſes; no advantage could have been taken of his manner of expreſſing himſelf; and his plea muſt have been allowed to be good.

As to Larwood's caſe; he was not allowed the benefit of the Toleration-act, becauſe he did not plead it. If he had inſiſted on his right to the benefit of it in his plea, the judgment muſt have been different. His inſerting it in his replication was not allowed, not becauſe it was not an allegation that would have excuſed him, if it had been originally taken notice of in his plea; but becauſe its being only mentioned afterwards was a departure from his plea.

In the caſe of the Mayor of Guildford, the Toleration-act was pleaded, the plea was allowed good, the diſability being eſteemed a lawful one; and the judgment was right.

And here the Defendant hath likewiſe inſiſted on his right to the benefit of the Toleration-act in his plea; he ſaith he is bonâ fide a Diſſenter, within the deſcription of the Toleration-act; that he hath taken the oaths and ſubſcribed the declaration required by that Act to ſhew that

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he is not a Popish Recusant; that he hath never received the sacrament according to the rites of the Church of England, and that he cannot in conscience do it; and that for more than fifty years past he hath not been present at Church at the celebration of the established worship; but hath constantly received the sacrament, and attended divine service, among the Protestant Dissenters. And these facts are not denied by the Plaintiff: though they might easily have been traversed, and it was incumbent upon them to have done it, if they had not known they should certainly fail in it. There can be no doubt therefore that the Defendant is a Dissenter, an honest conscientious Dissenter; and no conscientious Dissenter can take the sacrament at church; the Defendant saith he cannot do it, and he is not obliged to do it. And as this is the case, as the Law allows him to say this, as it hath not stopped his mouth; the plea which he makes is a lawful plea, his disability being through no crime or fault of his own; I say, he is disabled by Act of Parliament, without the concurrence or intervention of any fault or crime of his own; and therefore he may plead this disability in bar of the present action.

The case of "Atheists and Infidels" * is out of the present question; they come not within the description of the Toleration-act. And this is the sole point to be enquired into, in all cases of the like nature with that of the Defendant, who here pleads the Toleration-act; Is the man bonâ fide a Dissenter within the description of that Act? If not, he cannot plead his disability in consequence of his not having taken the sacrament in the Church of England: if he is, he may lawfully and with effect plead it, in bar of such an action. And the question, on which this distinction is grounded, must be tried by a jury.

It hath been said †, that "this being a matter between "God and a man's own conscience, it cannot come un-

* Objected by Mr. Baron Perrot. † Mr. Baron Perrot.

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"der the cognizance of a jury." But certainly it may: and, though God alone is the abſolute judge of a man's religious profeſſion, and of his conſcience; yet there are ſome marks even of ſincerity; among which there is none more certain than conſiſtency. Surely a man's ſincerity may be judged of by overt-acts: It is a juſt and excellent maxim, which will hold good in this as in all other caſes, "By their fruits ye ſhall know them." Do they—I do not ſay go to Meeting now and then—but do they frequent the Meeting-houſe? Do they join generally and ſtatedly, in divine worſhip with diſſenting congregations? Whether they do or not, may be aſcertained by their neighbours, and by thoſe who frequent the ſame places of worſhip. In caſe a man hath occaſionally conformed for the ſake of places of truſt and profit; in that caſe, I imagine, a jury would not heſitate in their verdict. If a man then alledges he is a Diſſenter, and claims the protection and the advantages of the Toleration-act; a jury may juſtly find, that he is not a Diſſenter within the deſcription of the Toleration-act, ſo far as to render his diſability a lawful one: If he takes the ſacrament for his intereſt, the jury may conclude, that his ſcruple of conſcience is a falſe pretence when ſet up to avoid a burthen.

The Defendant in the preſent cauſe pleads, that he is a Diſſenter within the deſcription of the Toleration-act; that he hath not taken the ſacrament in the Church of England within one year preceding the time of his ſuppoſed election, nor ever in his whole life; and that he cannot in conſcience do it.

Conſcience is not controulable by human laws, nor amenable to human tribunals. Perſecution, or attempts to force conſcience, will never produce conviction; and are only calculated to make hypocrites, or—martyrs.

My Lords, there never was a ſingle inſtance from the Saxon times down to our own, in which a man was ever puniſhed

puniſhed for erroneous opinions concerning rites or modes of worſhip, but upon ſome poſitive law. The common law of England, which is only common reaſon or uſage, knows of no proſecution for mere opinions: For Atheiſm, Blaſphemy, and reviling the Chriſtian Religion, there have been inſtances of perſons proſecuted and puniſhed upon the common law; but bare Nonconformity is no ſin by the common law; and all poſitive laws inflicting any pains or penalties for Nonconformity to the eſtabliſhed rites and modes, are repealed by the act of Toleration; and Diſſenters are thereby exempted from all eccleſiaſtical cenſures.

What bloodſhed and confuſion have been occaſioned from the reign of Henry the Fourth, when the firſt penal ſtatutes were enacted, down to the Revolution in this kingdom, by laws made to force conſcience! There is nothing certainly more unreaſonable, more inconſiſtent with the rights of human nature, more contrary to the ſpirit and precepts of the Chriſtian Religion, more iniquitous and unjuſt, more impolitic, than Perſecution. It is againſt Natural Religion, Revealed Religion, and ſound Policy.

Sad experience, and a large mind, taught that great man the Preſident De Thou, this doctrine: let any man read the many admirable things which, though a Papiſt, he hath dared to advance upon the ſubject, in the dedication of his hiſtory to Harry the Fourth of France (which I never read without rapture); and he will be fully convinced, not only how cruel, but how impolitic, it is to perſecute for religious opinions. I am ſorry, that of late his countrymen have begun to open their eyes, ſee their error, and adopt his ſentiments: I ſhould not have broke my heart, (I hope I may ſay ſo without breach of chriſtian charity), if France had continued to cheriſh the Jeſuits, and to perſecute the Huguenots. There was no occaſion to revoke the Edict of Nants; the Jeſuits needed only to have

have adviſed a plan ſimilar to what is contended for, in the preſent caſe: Make a law to render them incapable of office; make another, to puniſh them for not ſerving. If they accept, puniſh them (for it is admitted on all hands, that the Defendant in the cauſe before your Lordſhips is proſecutable for taking the office upon him): If they accept, puniſh them; if they refuſe, puniſh them; if they ſay, yes, puniſh them; if they ſay, no, puniſh them. My Lords, this is a moſt exquiſite dilemma, from which there is no eſcaping; it is a trap a man cannot get out of; it is as bad perſecution as the bed of Procruſtes: If they are too ſhort, ſtretch them; if they are too long, lop them. Small would have been their conſolation to have been gravely told, The Edict of Nants is kept inviolable; you have the full benefit of that act of Toleration, you may take the ſacrament in your own way with impunity; you are not compelled to go to Maſs. Was this caſe but told in the City of London as of a proceeding in France, how would they exclaim againſt the jeſuitical diſtinction! and yet in truth it comes from themſelves: the Jeſuits never thought of it: when they meant to perſecute, their act of Toleration, the Edict of Nants, was repealed.

This By-law, by which the Diſſenters are to be reduced to this wretched dilemma, is a By-law of the City, a local corporation, contrary to an Act of Parliament, which is the law of the land; a modern By-law, of very modern date, made long ſince the Corporation-act, long ſince the Toleration-act, in the face of them: for they knew theſe laws were in being. It was made in ſome year of the reign of the late king: I forget which; but it was made about the time of *building the Manſion-houſe*. Now if it could be ſuppoſed, the City have a power of making ſuch a By-law; it would entirely ſubvert the Toleration-act, the deſign of which was to exempt the Diſſenters from all penalties; for by ſuch a By-law they have it in their power to make every Diſſenter pay a fine of ſix hundred pounds, or any ſum they pleaſe; for it amounts to that.

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The professed design of making this By-law, was to get fit and able persons to serve the office: and the Plaintiff sets forth in his declaration, that if the Dissenters are excluded, they shall want fit and able persons to serve the office. But were I to deliver my own suspicion, it would be, that they did not so much wish for their services, as for their fines. Dissenters have been appointed to this office, one who was blind, another who was bedridden; not, I suppose, on account of their being fit and able to serve the office. No; they were disabled both by Nature and by Law.

We had a case lately in the Courts below, of a person chosen Mayor of a Corporation, while he was beyond the seas, with his Majesty's troops in America; and they knew him to be so. Did they want him to serve the office? No; it was impossible. But they had a mind to continue the former Mayor a year longer, and to have a pretence for setting aside him who was now chosen, on all future occasions, as having been elected before.

In the cause before your Lordships, the Defendant was by law incapable at the time of his pretended election: and it is my firm persuasion, that he was chosen because he was incapable. If he had been capable, he had not been chosen; for they did not want him to serve the office. They chose him, because without a breach of the law and an usurpation on the Crown, he could not serve the office. They chose him, that he might fall under the penalty of their By-law made to serve a particular purpose: In opposition to which, and to avoid, the fine thereby imposed, he hath pleaded a legal disability grounded on two Acts of Parliament: As I am of opinion, that his plea is good, I conclude with moving your Lordships,

That the Judgment be affirmed.

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The Judgment was immediately affirmed, *Nemine contradicente*; and the entry in the Journal is in the following words:

Die Mercurii 4 Februarii 1767.

It is ordered and adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, That the Judgment given by the Commiſſioners Delegates appointed to hear the Errors in a Judgment given in the Sheriff's Court London, and affirmed by the Court of Huſtings, reverſing the Judgment of the Sheriff's Court and Court of Huſtings, be and the ſame is hereby affirmed; and that the Record be remitted.

FINIS.